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Presidential Documents

Title 3—

The President

Proclamation 6630 of November 29, 1993

National Hospice Month, 1993 and 1994

By the President of the United States of America

A Proclamation

As Americans work together to reform our Nation's health care system, I am pleased to proclaim November 1993 and 1994 as National Hospice Month.

Hospice is an eminently successful program, a vital health care service that allows the terminally ill to die with dignity. It addresses the importance of being in a warm, familiar, and comforting environment in our last days. This care helps not only in preserving and enhancing the patient's quality of life during an illness, but also in giving support to the family following the death of a loved one. This attention underscores the importance of the needs of the entire family and highlights the dedication of this supportive and knowledgeable interdisciplinary team.

The public and private sectors have forged a unique partnership in the development of high standards and new programs for hospice care. These and other changes to be brought about by health care reform hold the promise for even greater accomplishments as we try to improve the quality of life of those most in need. Thus, my Administration is deeply committed to maintaining and strengthening these efforts in our health care system.

In recognition of the importance of hospice programs and in honor of the many dedicated volunteers and professionals who care for the terminally ill and their families, the Congress, by House Joint Resolution 159, has designated November 1993 and 1994 as "National Hospice Month" and has authorized and requested the President to issue a proclamation in observance of these months.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim November 1993 and 1994 as National Hospice Month. I encourage all Americans to recognize the importance of hospice care and to observe these months with appropriate activities and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93–29562
Filed 11–29–93; 4:29 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6631 of November 29, 1993

National Home Care Week, 1993 and 1994

By the President of the United States of America

A Proclamation

Home care, the oldest form of health care, traditionally has been provided by families for their loved ones for centuries. It is also a new form of health care, as modern technology has developed to the point where virtually anything available in a hospital can now be provided in the home, a secure and comforting environment.

Each day, thousands of hardworking men and women bring vital home health care services to Americans who are incapacitated by illness, age, or disability. Working in association with more that 12,000 home care agencies across the country, these dedicated professionals and volunteers form a core of caring support in our Nation's vast health care system. This week, we honor them and express our deepest appreciation for their many contributions.

The administrators and employees of home health care agencies work closely with government agencies and with concerned private organizations, including hospitals, to give patients a welcome alternative to institutionalized care. Home health care treats the patient and his or her family members, attending to needs both physical and spiritual, in an atmosphere that fosters dignity, healing, and independence. Secure in familiar surroundings, patients find comfort in the support of their loved ones, while receiving efficient, effective health services, free from institutional constraints.

For the nine to eleven million Americans of all ages who currently require long-term care, there is a unanimity of voice in the choosing of home health care as an alternative to hospital stays. At a time when we are striving to reform our health care system and make it work for all of our citizens, home care is an excellent and cost-effective method.

Thousands of nurses, therapists, social workers, home health aides, and others provide our Nation's home care services, and each of them deserves our recognition and heartfelt thanks. With understanding and compassion, they do more than prolong life—they enhance its quality. For this priceless gift, we honor their service.

To increase public awareness of and support for our Nation's home care agencies, the Congress, by Senate Joint Resolution 55, has designated the weeks beginning November 28, 1993, and November 27, 1994, as "National Home Care Week" and has authorized and requested the President to issue a proclamation in observance of these weeks.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the weeks of November 28 through December 4, 1993, and November 27 through December 3, 1994, as National Home Care Week. I encourage all Americans to observe these weeks with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93–29563
Filed 11–29–93; 4:28 pm]
Billing code 3195–01–P

Presidential Documents

Executive Order 12883 of November 29, 1993

Delegating a Federal Pay Administration Authority

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5304 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Section 2 of Executive Order No. 12748 is amended by adding at the end thereof a new subsection (c) to read as follows:

"(c) The President's Pay Agent, as designated in subsection (a), is hereby authorized and designated to exercise the authorities of the President under section 5304(h) concerning the extension of locality-based comparability payments to certain categories of positions not otherwise covered."

Sec. 2. This order shall be effective immediately.

William J. Clinton

THE WHITE HOUSE,
November 29, 1993.

[FR Doc. 93–29564
Filed 11–29–93; 4:27 pm]
Billing code 3195–01–P

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135 and 1138

[Docket No. AO–14–A65–RO2, etc; DA–91–013]

Milk in the New England and Certain Other Marketing Areas; Order Amending the Orders

7 CFR part	Marketing area	AO Nos.
1001	New England	AO–14–A65–R02
1002	New York-New Jersey.	AO–71–A80–R02
1004	Middle Atlantic	AO–160–A68–R02
1005	Carolina	AO–388–A5–R02
1007	Georgia	AO–366–A34–R02
1011	Tennessee Valley	AO–251–A36–R02
1030	Chicago Regional	AO–361–A29–R02
1033	Ohio Valley	AO–166–A62–R02
1036	Eastern Ohio-Western Pennsylvania.	AO–179–A57–R02
1040	Southern Michigan	AO–225–A43–R02
1044	Michigan Upper Peninsula.	AO–299–A27–R02
1046	Louisville-Lexington-Evansville.	AO–123–A63–R02
1049	Indiana	AO–319–A40–R02
1065	Nebraska-Western Iowa.	AO–86–A48–R02
1068	Upper Midwest	AO–178–A46–R02
1079	Iowa	AO–295–A42–R02
1093	Alabama-West Florida.	AO–386–A12–R02
1094	New Orleans-Mississippi.	AO–103–A54–R02
1096	Greater Louisiana	AO–257–A41–R02
1097	Memphis, Tennessee[1].	AO–219–A47–R02
1098	Nashville, Tennessee[1].	AO–184–A56–R02
1099	Paducah, Kentucky.	AO–183–A46–R02
1106	Southwest Plains	AO–210–A53–R02
1108	Central Arkansas	AO–243–A44–R02
1124	Pacific Northwest	AO–368–A20–R02
1126	Texas	AO–231–A61–R02
1131	Central Arizona	AO–271–A30–R02
1135	Southwestern Idaho-Eastern Oregon.	AO–380–A10–R02
1138	New Mexico-West Texas[2].	AO–335–A37–R02

[1] The Memphis, Tennessee and Nashville, Tennessee orders were terminated, effective July 31, 1993.

[2] The Lubbock-Plainview, Texas Panhandle and Rio Grande Valley orders were merged to form the New Mexico-West Texas order, effective December 1, 1991.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends 27 Federal milk marketing orders based on evidence received at three separate hearing sessions. The amended orders will provide a special III–A class and price for producer milk that is used to produce nonfat dry milk (NFDM). The Class III–A prices under these orders will be established from product formulas that are based on NFDM prices for the month. Class III–A pricing, which currently is effective on an interim basis in three of the markets where the changes were urgently needed, will be unchanged. The Western powder price will be used in the III–A formulas for the three far-western markets and the Central States NFDM price will be used in the pricing formulas for the other markets.

Each of the amended orders was approved by producers who were eligible to have their milk pooled during the representative month. Referenda were conducted in six markets and cooperative associations were polled in the other 21 markets.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a final rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended orders will facilitate the orderly disposition of the reserve milk supplies of the affected markets by handlers regulated under such orders.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937 as amended, (7 U.S.C. 601–674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not

later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued July 16, 1991; published July 22, 1991 (56 FR 33395).

Tentative Decision: Issued December 10, 1991; published December 19, 1991 (56 FR 65801) and corrected December 23, 1991 (56 FR 66482).

Revised Tentative Decision: Issued December 24, 1991; published January 2, 1992 (57 FR 15).

Interim Amendment of Orders: Issued December 27, 1991; published January 3, 1992 (57 FR 173).

Notice of Reopened Hearing: Issued August 11, 1992; published August 14, 1992 (57 FR 36609).

Notice of Reopened Hearing: Issued September 22, 1992; published September 25, 1992 (57 FR 44344).

Revised Tentative Decision: Issued October 20, 1992; published October 27, 1992 (57 FR 48575).

Interim Amendment of Orders: Issued October 29, 1992; published November 3, 1992 (57 FR 49633).

Recommended Decision: Issued May 11, 1993; published May 19, 1993 (58 FR 29133).

Extension of Time to File Exceptions: Issued June 11, 1993; published June 17, 1993 (58 FR 33347).

Final Decision: Issued October 20, 1993; published October 29, 1993 (58 FR 58112).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, for each of the specified orders, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending each of the specified orders effective on December 1, 1993. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The provisions of this order amending the aforesaid orders are known to handlers. The recommended decision of the Acting Administrator was issued May 11, 1993, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued October 20, 1993. The changes effected by this order will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending each of the specified orders effective on December 1, 1993, and that it would be contrary to the public interest to delay the effective date of this amending order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within each of the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended;

(3) The issuance of the order amending each of the specified orders, except the orders regulating the handling of milk in the Michigan Upper Peninsula and Paducah, Kentucky marketing areas, is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas;

(4) The issuance of the order amending the order regulating the handling of milk in the Michigan Upper Peninsula marketing area, is favored by at least three-fourths of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area; and

(5) The issuance of the order amending the order regulating the handling of milk in the Paducah, Kentucky marketing area, is favored by producers who during the determined representative period accounted for two-thirds of the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1135, 1138

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in each of the aforesaid marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1135, 1138, continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. Section 1001.40 (c)(1)(iii) and (d) are republished.

§ 1001.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1001.43(f) is republished.

§ 1001.43 General classification rules.

* * * * *

(f) Class III-A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III-A shall be determined by prorating receipts from pool sources to Class III-A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

* * * * *

3. Section 1001.50 is amended by revising paragraph (d) to read as follows:

§ 1001.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

4. Section 1001.54 is republished.

§ 1001.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1001.50(b).

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. Section 1002.40 is amended by adding paragraph (d) to read as follows:

§ 1002.40 General classification rules.

* * * * *

(d) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant or unit.

2. Section 1002.41 is amended by revising paragraph (d)(1)(iii) and adding paragraph (e) to read as follows:

§ 1002.41 Classes of utilization.

* * * * *

(d) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(e) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

3. Section 1002.50 is amended by adding paragraph (e) to read as follows:

§ 1002.50 Class prices.

* * * * *

(e) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (d) of this section for the applicable month.

§ 1002.52 [Amended]

4. Section 1002.52 is amended by changing the table heading in column C in paragraph (c) from "Classes II and III" to "Classes II, III and III–A."

5. Section 1002.56 is amended by revising paragraph (a)(2) to read as follows:

§ 1002.56 Announcement of class prices and butterfat differential.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month applicable at the 201–210 mile zone and at the 1–10 mile zone;

* * * * *

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. Section 1004.40 (c)(1)(iii) and (d) are republished.

§ 1004.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1004.43(d) is republished.

§ 1004.43 General classification rules.

* * * * *

(d) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

* * * * *

3. Section 1004.50 is amended by revising the center heading preceding the section and paragraph (g) to read as follows:

Class and Component Prices

§ 1004.50 Class and component prices.

* * * * *

(g) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

4. Section 1004.53(a)(2) is republished.

§ 1004.53 Announcement of class prices and component prices.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month; and

* * * * *

5. and 6. Section 1004.60(k) is republished.

§ 1004.60 Handler's value of milk for computing uniform prices.

* * * * *

(k) For producer milk in Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

* * * * *

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. Section 1005.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1005.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1005.43 is amended by adding paragraph (e) to read as follows:

§ 1005.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1005.50 is amended by adding paragraph (d) to read as follows:

§ 1005.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1005.54 is revised to read as follows:

§ 1005.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1005.50(b).

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. Section 1007.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1007.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1007.43 is amended by adding paragraph (e) to read as follows:

§ 1007.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1007.50 is amended by adding paragraph (d) to read as follows:

§ 1007.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1007.53 is revised to read as follows:

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1007.50(b).

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. Section 1011.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1011.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1011.43 is amended by adding paragraph (e) to read as follows:

§ 1011.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1011.50 is amended by adding paragraph (d) to read as follows:

§ 1011.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1011.53 is revised to read as follows:

§ 1011.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1011.50(b).

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. Section 1030.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1030.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1030.43 is amended by adding paragraph (e) to read as follows:

§ 1030.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1030.50 is amended by adding paragraph (d) to read as follows:

§ 1030.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1030.53 is revised to read as follows:

§ 1030.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth

day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1030.50(b).

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. Section 1033.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1033.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1033.43 is amended by adding paragraph (f) to read as follows:

§ 1033.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1033.50 is amended by adding paragraph (g) to read as follows:

§ 1033.50 Class and component prices.

* * * * *

(g) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent.

4. Section 1033.53 is amended by revising paragraph (a)(2) to read as follows:

§ 1033.53 Announcement of class and component prices.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month;

* * * * *

5. Section 1033.60 is amended by adding paragraph (m) to read as follows:

§ 1033.60 Computation of handlers' obligations to pool.

* * * * *

(m) For producer milk in Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1036.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1036.43 is amended by adding paragraph (e) to read as follows:

§ 1036.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1036.50 is amended by adding paragraph (g) to read as follows:

§ 1036.50 Class and component prices.

* * * * *

(g) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent.

4. Section 1036.53 is amended by revising paragraph (a)(2) to read as follows:

§ 1036.53 Announcement of class and component prices.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month;

* * * * *

5. Section 1036.60 is amended by adding paragraph (m) to read as follows:

§ 1036.60 Computation of handlers' obligations to pool.

* * * * *

(m) For producer milk in Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. Section 1040.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1040.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1040.43 is amended by adding paragraph (f) to read as follows:

§ 1040.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1040.50 is amended by adding paragraph (d) to read as follows:

§ 1040.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1040.53 is revised to read as follows:

§ 1040.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1040.50(b).

PART 1044—MILK IN THE MICHIGAN UPPER PENINSULA MARKETING AREA

1. Section 1044.22 is amended by revising paragraph (i)(1)(iii) to read as follows:

§ 1044.22 Additional duties of the market administrator.

* * * * *

(i) * * *

(1) * * *

(iii) The Class III and Class III–A prices for the preceding month; and

* * * * *

2. Section 1044.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1044.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

3. Section 1044.43 is amended by adding paragraph (f) to read as follows:

§ 1044.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

4. Section 1044.50 is amended by adding paragraph (d) to read as follows:

§ 1044.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. Section 1046.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1046.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1046.43 is amended by adding paragraph (e) to read as follows:

§ 1046.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1046.50 is amended by adding paragraph (d) to read as follows:

§ 1046.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1046.53 is revised to read as follows:

§ 1046.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1046.50(b).

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1049.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1049.43 is amended by adding paragraph (e) to read as follows:

§ 1049.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III—A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1049.50 is amended by adding paragraph (g) to read as follows:

§ 1049.50 Class and component prices.

* * * * *

(g) *Class III—A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent.

4. Section 1049.53 is amended by revising paragraph (a)(2) to read as follows:

§ 1049.53 Announcement of class and component prices.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month;

* * * * *

5. Section 1049.60 is amended by adding paragraph (l) to read as follows:

§ 1049.60 Computation of handlers' obligations to pool.

* * * * *

(l) For producer milk in Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1065.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1065.43 is amended by adding paragraph (e) to read as follows:

§ 1065.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1065.50 is amended by adding paragraph (d) to read as follows:

§ 1065.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1065.53 is revised to read as follows:

§ 1065.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1065.50(b).

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1068.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1068.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1068.43 is amended by adding paragraph (f) to read as follows:

§ 1068.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1068.50 is amended by adding paragraph (d) to read as follows:

§ 1068.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1068.53 is revised to read as follows:

§ 1068.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1068.50(b).

PART 1079—MILK IN THE IOWA MARKETING AREA

1. Section 1079.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1079.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1079.43 is amended by adding paragraph (e) to read as follows:

§ 1079.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1079.50 is amended by adding paragraph (d) to read as follows:

§ 1079.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1079.50(b).

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

1. Section 1093.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1093.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1093.43 is amended by adding paragraph (e) to read as follows:

§ 1093.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1093.50 is amended by adding paragraph (d) to read as follows:

§ 1093.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1093.53 is revised to read as follows:

§ 1093.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1093.50(b).

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. Section 1094.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1094.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1094.43 is amended by adding paragraph (e) to read as follows:

§ 1094.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1094.50 is amended by adding paragraph (d) to read as follows:

§ 1094.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1094.53 is revised to read as follows:

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1094.50(b).

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. Section 1096.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1096.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1096.43 is amended by adding paragraph (e) to read as follows:

§ 1096.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1096.50 is amended by adding paragraph (d) to read as follows:

§ 1096.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1096.53 is revised to read as follows:

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1094.50(b).

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

1. Section 1099.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1099.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1099.43 is amended by adding paragraph (e) to read as follows:

§ 1099.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1099.50 is amended by adding paragraph (d) to read as follows:

§ 1099.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1099.53 is revised to read as follows:

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1094.50(b).

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. Section 1106.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1106.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1106.43 is amended by adding paragraph (e) to read as follows:

§ 1106.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1106.50 is amended by adding paragraph (d) to read as follows:

§ 1106.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1106.53 is revised to read as follows:

§ 1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1106.50(b).

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. Section 1108.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1108.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1108.43 is amended by adding paragraph (e) to read as follows:

§ 1108.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1108.50 is amended by adding paragraph (d) to read as follows:

§ 1108.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1108.53 is revised to read as follows:

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1108.50(b).

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.40 (c)(1)(iii) and (d) are republished.

§ 1124.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1124.43 (e) is republished.

§ 1124.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

* * * * *

3. Section 1124.50, paragraph (c) is republished and paragraph (d) is revised to read as follows:

§ 1124.50 Class prices.

* * * * *

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1124.53 is republished.

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1124.50(b).

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. Section 1126.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1126.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1126.43 is amended by adding paragraph (e) to read as follows:

§ 1126.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1126.50 is amended by adding paragraph (d) to read as follows:

§ 1126.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9

an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1126.53 is revised to read as follows:

§ 1126.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1126.50(b).

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. Section 1131.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1131.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) Class III–A milk. Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1131.43 is amended by adding paragraph (e) to read as follows:

§ 1131.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1131.50 is amended by adding paragraph (d) to read as follows:

§ 1131.50 Class prices.

* * * * *

(d) Class III–A price. The Class III–A price for the month shall be the average Western nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1131.53 is revised to read as follows:

§ 1131.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1131.50(b).

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. Section 1135.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1135.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1135.43 is amended by adding paragraph (e) to read as follows:

§ 1135.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1135.50 is amended by adding paragraph (d) to read as follows:

§ 1135.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1135.53 is revised to read as follows:

§ 1135.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1135.50(b).

PART 1138—MILK IN THE NEW MEXICO–WEST TEXAS MARKETING AREA

1. Section 1138.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1138.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1138.43 is amended by adding paragraph (e) to read as follows:

§ 1138.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1138.50 is amended by adding paragraph (d) to read as follows:

§ 1138.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1138.54 is revised to read as follows:

§ 1138.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1138.50(b).

Dated: November 23, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29266 Filed 11–30–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AGL–8]

Proposed Establishment of Class E Airspace; Mt. Sterling, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace near Mt. Sterling, IL to accommodate a new Very High Frequency Omnidirectional Range Station-Airport (VOR–A) instrument approach procedure to Mt. Sterling Municipal Airport, Mt. Sterling, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 u.t.c., January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Frink, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, July 6, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace near Mt. Sterling, IL, to accommodate a new Very High Frequency Omnidirectional Range Station-Airport (VOR–A) instrument approach procedure to Mt. Sterling Municipal Airport, Mt. Sterling, IL (58 FR 36157). The proposal was to add controlled airspace extending from 700 feet to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. On August 17, 1993, one organization, the One Hundred Eighty Third (183D) Fighter Group of the Illinois Air National Guard (ANG) objected based on their perceived adverse impact that the establishment would have on mission needs/requirements for low altitude training, especially within the Pruitt Military Operations Area (MOA). After consulting with Air Force Liaison in Kansas City, MO, we received on October 5, 1993, a letter advising that, in the interest of cooperating with other Illinois aviation interests, the IL ANG is willing to wait and assess the frequency and severity of mission degradation after the procedure is implemented. Further, the IL ANG is willing to work with this airport if it is determined that there is an adverse impact to either military or civil operation. Based on this letter from the Department of the Air Force, Headquarters Air Force Flight Standards Agency, the Federal Aviation Agency is proceeding with a Final rule.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area" and has replaced it with the designation "Class E airspace". Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Mt. Sterling, IL, to accommodate a new Very High Frequency Omnidirectional Range Station-Airport (VOR–A) instrument approach procedure to Mt. Sterling Municipal Airport, Mt. Sterling, IL. Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Mt. Sterling, IL [New]

Mt. Sterling Municipal Airport, IL (lat. 39°59'18"N, long. 90°48'15"W)

Quincy VORTAC (lat. 39°50'53"N, long. 91°16'44"W)

That airspace extending upwards from 700 ft. above the surface within a 5-mile radius of Mt. Sterling Municipal Airport, IL, and within 2.5 miles each side of the Quincy (UNI) VORTAC 069 radial, extending from the 5-mile radius area to 6-miles west of the airport.

* * * * *

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–29289 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 95

Gifts from Foreign Governments

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Foreign Gifts and Decorations Act of 1966 (5 U.S.C. 7342) requires that the minimal value requirement for reporting gifts received by U.S. employees from foreign governments be redefined every three years based on changes in the consumer price index. This administrative amendment is published to reflect the changes.

EFFECTIVE DATE: January 1, 1993.

ADDRESSES: L.M. Bynum, Correspondence and Directives Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 95

Foreign relations, Government employees, Government property Accordingly, 32 CFR part 95 is amended as follows:

PART 95—GIFTS FROM FOREIGN GOVERNMENTS

1. The authority citation for part 95 continues to read as follows:

Authority: 10 U.S.C. 113.

§ 95.3 [Amended]

Appendix A to part 95 [Amended]

2. Section 95.3 the definition of *Minimal value,* and Appendix A to Part 95, section 4, are amended by revising "$180" to read "$225"

Dated: November 24, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29282 Filed 11–30–93; 8:45 am]

BILLING CODE 5000–04–M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

Cost of Living Adjustment for Performance of Musical Compositions by Public Broadcasting Entities Licensed to Colleges and Universities

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal announces a cost of living adjustment of 2.6% in the royalty rates to be paid by public broadcasting entities licensed to colleges, universities or other nonprofit educational institutions which are not affiliated with National Public Radio, for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is an annual adjustment required by the Tribunal's rules.

EFFECTIVE DATE: The effective date is January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202–606–4400).

SUPPLEMENTARY INFORMATION: On December 22, 1992, the Copyright Royalty Tribunal published in the **Federal Register** (57 FR 60957) final rules governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works and published pictorial, graphic and sculptural works. It was determined in that proceeding that the royalty rate to be paid by public broadcasting entities licensed to colleges, universities and other nonprofit educational institutions which are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions would be adjusted each year according to changes in the Consumer Price Index. 37 CFR 304.10.

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 1992 to the most recent Index published prior to December 1, 1993 was 2.6% (1992's figure was 142.0; 1993's figure was 145.7, based on 1982–1984 equalling 100). Rounding off to the nearest dollar, the Tribunal announces an adjustment in the royalty rate to apply to the use of musical compositions in the repertory of ASCAP and BMI of $200, each, and $47 for the use of musical compositions in the repertory of SESAC.

List of Subjects in 37 CFR Part 304

Copyrights, Music, Radio, Television.

PART 304—[AMENDED]

1. The authority citation for part 304 continues to read as follows:

Authority: 17 U.S.C. 118 and 801 (1976).

2. 37 CFR 304.5(c) is amended by revising paragraphs (c)(1) through (c)(4).

§ 304.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP annually: $200.

(2) For all such compositions in the repertory of BMI annually: $200.

(3) For all such compositions in the repertory of SESAC annually: $47.

(4) For the performance of any other such compositions: $1.

* * * * *

Dated: November 22, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–29329 Filed 11–30–93; 8:45 am]

BILLING CODE 1410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 0E3906/R2019; FRL–4648–8]

RIN 2070–AB78

Pesticide Tolerance for Dimethoate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the insecticide dimethoate in or on the raw agricultural commodity Brussels sprouts. This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective December 1, 1993.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0E3906/R2019], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number:

6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 1, 1993 (58 FR 46148), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 0E3906 to EPA on behalf of the Agricultural Experiment Station of California. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of the pesticide dimethoate (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorodithioate) including its oxygen analog (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorothioate) in or on the raw agricultural commodity Brussels sprouts at 5.0 parts per million (ppm). The petitioner proposed that this use of dimethoate be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 1993.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.204, by amending paragraph (b) in the table therein by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.204 Dimethoate, including its oxygen analog; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Brussels sprouts	5.0

* * * * *

* * * * *

[FR Doc. 93-29017 Filed 11-30-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-195; RM-8274]

Radio Broadcasting Services; Los Molinos, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 269A to Los Molinos, California, as that community's first local aural transmission service, in response to a petition for rule making filed by Brett E. Miller. See 58 FR 39493, July 23, 1993. Coordinates used for Channel 269A at Los Molinos are 40-01-12 and 122-05-42. With this action, the proceeding is terminated.

DATES: Effective January 10, 1994. The window period for filing applications on Channel 269A at Los Molinos, California, will open on January 11, 1994, and close on February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process for Channel 269A at Los Molinos, California, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-195, adopted November 1, 1993, and released November 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Los Molinos, Channel 269A.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29395 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–223; RM–8294]

Radio Broadcasting Services; Indian River Shores, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 246A to Indian River Shores, Florida, as that community's first local aural transmission service, at the request of deHaro Communications, Inc. See 58 FR 42713, August 11, 1993. Channel 246A can be allotted to Indian River Shores in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 246A at Indian River Shores are North Latitude 27–41–10 and West Longitude 80–22–10. With this action, this proceeding is terminated.

DATES: Effective January 10, 1994. The window period for filing applications for Channel 246A at Indian River Shores, Florida, will open on January 11, 1994, and close on February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–223, adopted November 1, 1993, and released November 16, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Indian River Shores, Channel 246A.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29396 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–137; RM–8227]

Radio Broadcasting Services; Hastings, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Allen's of Hastings Radio, allots Channel 233C2 to Hastings, Nebraska, as its second local FM service. See 58 FR 32340, June 9, 1993. Channel 233C2 can be allotted to Hastings in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.4 kilometers (4.0 miles) northwest, at coordinates North Latitude 40–38–23 and West Longitude 98–25–25, to avoid a short-spacing to Station KJCK–FM, Channel 233C1, Junction City, Kansas. The proposal must also conform with the technical requirements of Section 73.1030(c)(1)–(5) of the Commission's Rules regarding protection to the Commission's monitoring station at Grand Island, Nebraska. With this action, this proceeding is terminated.

DATES: Effective January 10, 1994. The window period for filing applications will open on January 11, 1994, and close on February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–137, adopted November 1, 1993, and released November 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Channel 233C2 at Hastings.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29397 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84–01; Notice 32]

RIN 2127–AE93

Final Listing of High Theft Lines for 1994 Model Year; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule reports the results of NHTSA's determinations of high theft car lines that are subject to the parts marking requirements of the motor vehicle theft prevention standard, and of high theft car lines that are exempted from parts marking, for Model Year 1994. This action is pursuant to the Motor Vehicle Information and Cost Savings Act, which provides that NHTSA select high theft lines, with the

agreement of the manufacturer, if possible. This final listing is intended to inform the public, particularly law enforcement groups, of the car lines that are subject to the parts marking requirements of the theft prevention standard for Model Year 1994.

EFFECTIVE DATE: The amendment made by this final rule is effective December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: The Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541, sets forth requirements for inscribing or affixing identification numbers onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines.

Section 603(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2023(a)(2)) (hereinafter "the Cost Savings Act") specifies that NHTSA shall select the high theft lines, with the agreement of the manufacturer, if possible. Section 603(d) of the Cost Savings Act (15 U.S.C. 2023(d)) provides that once a line has been designated as a high theft line, it remains subject to the theft prevention standard unless that line is exempted under section 605 of the Cost Savings Act (15 U.S.C. 2025). Section 605 provides that a manufacturer may petition to have a high theft line exempted from the requirements of part 541, if the line is equipped as standard equipment with an antitheft device. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with part 541 in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of the lines which were previously listed as high theft lines and of the lines which are being listed for the first time and will be subject to the theft prevention standard beginning with Model Year 1994. It also identifies those car lines that are exempted from the theft prevention standard for the 1994 model year because of standard equipment antitheft devices.

For Model Year 1994, the agency selected seven new car lines, in accordance with procedures published in 49 CFR part 542, as likely to be high theft lines. The newly selected lines are: The Dodge Colt, Dodge Shadow, Eagle Summit, Plymouth Colt, and Plymouth Sundance, Mitsubishi Mirage, and Subaru Legacy. In addition to these seven lines, the list of high theft lines includes all those lines that were selected as high theft lines and listed for prior model years.

The list of exempted lines includes six high theft lines exempted by the agency, beginning in Model Year 1994, from the parts marking requirements of part 541. Four of these car lines are exempted in full from part 541, and two are exempted in part, with the manufacturer required to mark only the engines and transmissions of these vehicles. The four car lines exempted in full are the Mazda Amati 800 and 1000, the Saab 900, and the Volkswagen Jetta III. The two car lines exempted in part are both General Motors lines: The Cadillac Eldorado, and Cadillac Seville. One car line, the General Motors Cadillac Sixty Special, previously exempted in part from parts marking, has been renamed for Model year 1994 as the Cadillac Concours. The updated list reflects this name change.

Lastly, in this final rule, the agency removes from appendix A the Reliant SS1, and removes from appendix A–I the Volvo 480ES. NHTSA removes these two lines because, although the manufacturer of each line informed NHTSA of its intent to introduce its line into commerce in the United States, neither the SS1 nor the 480ES have been introduced in the United States. Reliant intended to introduce the SS1 in Model Year 1987, and Volvo intended to introduce the 480ES in Model Year 1988. If the manufacturer of either line should introduce its line into the United States, the line will be added to its respective list.

Notice and Comment; Effective Date

The car lines listed as being subject to the parts marking standard have previously been selected as high theft lines in accordance with the procedures of 49 CFR part 542 and section 603 of the Cost Savings Act. Under these procedures, manufacturers evaluate new car lines to conclude whether those new lines are likely to be high theft lines. Manufacturers submit these evaluations and conclusions to the agency, which makes an independent evaluation, and, on a preliminary basis, determines whether the new line should be subject to parts marking. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to reconsider these preliminary determinations. Within 60 days of the receipt of the request, NHTSA makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new car lines on the high theft list is the subject of a prior final determination.

Similary, the car lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR part 543 and section 605 of the Cost Savings Act.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listings of selections and exemptions is not contemplated by title VI, and is unnecessary since the selections and exemptions have previously been made in accordance with the statutory criteria and procedure.

For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose any additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also considered this notice under Executive Order 12866. As already noted, the selections in this final rule have previously been made in accordance with the provisions of the Cost Savings Act, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of part 541 for Model Year 1994. Further, this listing does not actually exempt lines from the requirements of part 541; it only informs the general public of all such previously granted exemptions. Since the only purpose of this final listing is to inform the public of prior agency action for Model Year 1994, a full regulatory evaluation has not been prepared.

2. Regulatory Flexibility Act

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this final rule

is simply to inform the public of those lines that are subject to the requirements of part 541 for Model Year 1994. The agency believes that listing of this information will not have any economic impact on small entities.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule, and determined that it will not have any significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

5. Civil Justice Reform

This final rule does not have a retroactive effect and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2030) provides that judicial review of this rule may be obtained pursuant to section 504 of the Cost Savings Act (15 U.S.C. 2004). The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

PART 541—[AMENDED]

In consideration of the foregoing, 49 CFR part 541 is amended as follows:

1. The authority citation for part 541 continues to read as follows:

Authority: 15 U.S.C. 2021–2024 and 2026; delegation of authority at 49 CFR 1.50.

2. In part 541, appendix A, appendix A–I, and appendix A–II are revised to read as follows:

APPENDIX A.—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

Manufacturer	Subject line
Alfa Romeo	Milano 161.
	Fiat 164.
BMW	3 Car Line.
	5 Car Line.
	6 Car Line.
Chrysler	Chrysler Executive Sedan/Limousine.
	Chrysler Fifth Avenue/Newport.
	Chrysler Laser.
	Chrysler LeBaron/Town & Country.
	Chrysler LeBaron GTS.
	Chrysler's TC.
	Chrysler New Yorker Fifth Avenue.
	Dodge Aries.
	Dodge Colt.[1]
	Dodge Daytona.
	Dodge Diplomat.
	Dodge Lancer.
	Dodge Shadow.[1]
	Dodge 600.
	Dodge Stealth.
	Eagle Summit.[1]
	Eagle Talon.
	Plymouth Caravelle.
	Plymouth Colt.[1]
	Plymouth Laser.
	Plymouth Gran Fury.
	Plymouth Reliant.
	Plymouth Sundance.[1]
Consulier	Consulier GTP.
Ferrari	Mondial 8.
	308.
	328.
Ford	Ford Mustang.
	Ford Thunderbird.
	Ford Probe.
	Mercury Capri.
	Mercury Cougar.
	Lincoln Continental
	Lincoln Mark.
	Lincoln Town Car.
	Merkur Scorpio.
	Merkur XR4Ti.
General Motors	Buick Electra.
	Buick Reatta.
	Buick Regal.
	Buick Riviera.
	Chevrolet Nova.
	Chevrolet Lumina.
	Chevrolet Monte Carlo.
	Oldsmobile Cutlass Supreme.
	Oldsmobile Toronado.
	Pontiac Fiero.
	Pontiac Grand Prix.
	Geo Prizm.
	Geo Storm.
	Saturn Sports Coupe.
Isuzu	Impulse.
	Stylus.
Jaguar	XJ.
	XJ–6.
	XJ–40.
Lotus	Elan.
Maserati	Biturbo.
	Quattroporte.
	228.
Mazda	GLC.
	626.
	MX–6.
	MX–5 Miata.
	MX–3.
Mercedes-Benz	190 D.
	190 E.
	250 D–T.
	260 E.
	300 SDL.
	300 SE.
	300 SEC/500 SEC.
	300 SEL/500 SEL.
	300 TD.
	420 SEL.
	560 SEC.
	560 SEL.
	560 SL.
Mitsubishi	Cordia.
	Tredia.
	Eclipse.
	3000GT.
	Mirage.[1]
Peugeot	405.
Porsche	924S.
Subaru	XT.
	SVX.
	Legacy.[1]
Toyota	Camry.
	Celica.
	Corolla/Corolla Sport.
	MR2.
	Starlet.
Volkswagen	Audi Quattro.
	Volkswagen Cabriolet.
	Volkswagen Rabbit.
	Volkswagen Scirocco.
	Volkswagen Corrado.

[1] Car lines added beginning Model Year 1994.

APPENDIX A–I.—HIGH THEFT LINES WITH ANTITHEFT DEVICES THAT ARE EXEMPTED FROM THE REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturer	Exempted lines
Austin Rover	Sterling.
BMW	7 Car Line.
	8 Car Line.
Chrysler	Chrysler Conquest.
	Imperial.
General Motors	Cadillac Allante.
	Chevrolet Corvette.
Honda	Acura NS–X.
	Acura Legend.
	Acura Vigor.
Isuzu	Impulse (MYs 1987–1991).
Mazda	929.
	RX–7.
	Amati 800[1].
	Amati 1000[1].
Mercedes-Benz	124 Car Line, consisting of the following models: 300 E, 400 E, 500 E, 300 D, 300 TE, 300 CE.

APPENDIX A–I.—HIGH THEFT LINES WITH ANTITHEFT DEVICES THAT ARE EXEMPTED FROM THE REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543—Continued

Manufacturer	Exempted lines
	129 Car Line, consisting of the following models: 300 SL, 500 SL, 600 SL.
Mitsubishi	Galant.
	Starion.
	Diamante.
Nissan	Maxima.
	300 ZX.
	Infiniti M30.
	Infiniti Q45.
	Infiniti J30.
Porsche	911.
	928.
	968.
Saab	900[1].
	9000.
Toyota	Supra.
	Cressida.
	Lexus LS400.
	Lexus ES250.
	Lexus SC300.
	Lexus SC400.
Volkswagen	Audi 5000S.
	Audi 100.
	Audi 200.
	Jetta III.[1]

[1] Car lines added beginning Model Year 1994.

APPENDIX A–II.—HIGH THEFT LINES WITH ANTITHEFT DEVICES THAT ARE EXEMPTED IN PART FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturer-General Motors

Exempted lines	Parts marked
Chevrolet Camaro	Engine, Transmission.
Pontiac Firebird	Engine, Transmission.
Cadillac Concours[2]	Engine, Transmission.
Cadillac Eldorado[1]	Engine, Transmission.
Cadillac DeVille	Engine, Transmission.
Cadillac Seville[1]	Engine, Transmission.
Oldsmobile 98	Engine, Transmission.
Buick Park Avenue	Engine, Transmission.
Pontiac Bonneville	Engine, Transmission.
Buick LeSabre	Engine, Transmission.
Oldsmobile 88 Royale	Engine, Transmission.

[1] Car lines added beginning Model Year 1994

[2] This line was named the Fleetwood in Model Year 1992 and the Sixty Special in Model Year 1993.

Issued on: November 23, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–29223 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–59–M

49 CFR Part 544

[Docket No. 91–53; Notice 4]

RIN 2127–AE87

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, NHTSA publishes an updated listing of those motor vehicle insurers that are required under section 615 of the Motor Vehicle Information and Cost Savings Act to file an annual report with NHTSA. Lists of the insurers appear as appendices to agency regulations on insurer reporting requirements. Listed insurers must report each year unless and until they are exempted from reporting by the removal of their names from the listing.

DATES: Effective Date: The final rule on this subject is effective December 1, 1993.

Reporting Dates: Previously listed insurers whose names are not removed by this final rule were required to submit their reports for calendar year 1991 by October 25, 1993. Previously listed insurers whose names are removed by this notice need not submit reports for that year. Insurers newly listed in this final rule must submit their reports for that year on or before January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION:

Background

Section 615 of the Motor Vehicle Information and Cost Savings Act (the Act) (15 U.S.C. 2032) requires certain motor vehicle insurers to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The reports include information about thefts and recoveries of motor vehicles, the insurers to establish premiums for comprehensive coverage, the actions taken to insurers to reduce such premiums, and the actions taken by insurers to reduce or deter theft. Under the Act, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose premiums account for one percent or more of the total premiums of motor vehicle insurance issued in the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for ten percent or more of total premiums written within any one State; and (3) rental or leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity. As discussed in the following sections, the agency may, by regulation, exempt certain insurers from the reporting requirements.

A. Insurers of Passenger Motor Vehicles

Although issuers of motor vehicle insurance policies are subject to reporting requirements, section 615(a)(5) provides that the agency shall exempt small insurers from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 615(a)(5)(C) as an insurer whose premiums account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. That section also stimulates that if an insurer satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such an insurer must report the required information about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), appendix A lists companies which must report based on the fact that each insurer had at least one percent of the national market for motor vehicle insurance premiums. Appendix B lists those insurers that are required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. In the January 2, 1987 notice, the agency stated that these appendices will be updated annually. It has been NHTSA's practice to update the appendices based on date voluntarily provided by insurance companies to A. M. Best, and made available to the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition to companies that issue insurance policies, the term "insurers" is defined in section 615 of the Act to include certain self-insurers, i.e., any

person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. (Section 615(a)(3)). Section 615(a)(4) of the Act authorizes the agency to exempt an insurer from submitting the reports, if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, and

(2) The insurer's report will not significantly contribute to carrying out the purposes of title VI.

In a final rule dated June 22, 1990 (55 FR 25606), the agency in effect granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles. The agency issued this exemption because it believed that reports from the largest rental and leasing companies would provide the agency with a representative sampling of the theft experience of rental and leasing companies. NHTSA concluded that reports by the many smaller rental and leasing companies do not significantly contribute to carrying out title VI, and that exempting such companies will relieve an unnecessary burden on the vast majority of the companies potentially subject to the reporting requirements. As a result of the June 1990 final rule, a new appendix C, which consists of an annually updated listing of the rental and leasing companies that are subject to the reporting requirements in part 544, was added. It has been NHTSA's practice to update appendix C based primarily on information contained in the publications Automotive Fleet Magazine and Travel Business Travel News.

Notice of Proposed Rulemaking

On April 20, 1993, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in appendices A, B, and C, required to file reports. (See 58 FR 21277).

Based on 1991 calendar year A.M. Best data for market shares, NHTSA proposed that 19 companies be included in Appendix A. NHTSA proposed that one company, Hanover Insurance Companies, that was included in the previous final rule (See 57 FR 23535; June 4, 1992) be removed, and proposed that two companies not previously listed in appendix A, Motors Insurance Group of Companies and Zurich Insurance Group, be added. In addition, a company that was previously included in appendix A as Hartford Insurance Group, changed its name to ITT Hartford Insurance Group. The agency proposed to amend appendix A to reflect this name change.

Based on the 1991 calendar year A.M. Best data for market shares, NHTSA proposed that appendix B be amended to include 11 companies. Ten of the companies would report on their activities in one state, and one company would report on their activities in one state, and one company would report on its activities in two states. NHTSA proposed removal of Indiana Farm Bureau Group, which had previously reported on its activities in the State of Indiana, and proposed the addition of Arbella Mutual Insurance, to report on its activities in the State of Massachusetts, and Commerce Group, Inc, to report on its activities in the state of Massachusetts.

Based on information in Automotive Fleet Magazine and Travel Trade Business Travel News for 1989, NHTSA proposed that one rental and leasing company, Rental Concepts, Inc., be removed from appendix C. Based on information provided by that company, NHTSA also proposed that Wheels, Inc. be removed from appendix C. The agency also proposed that four additional rental and leasing companies, ARI, Inc., Enterprise Rent-A-Car, LMV Leasing, and U.S. Fleet Leasing, be included in appendix C.

Public Comments and Final Determination

In response to the NPRM, the agency received comments from seven commenters. All seven commenters were companies listed in the April 1993 NPRM. Each commenter questioned the appropriateness of its inclusion in one of the appendices.

Motors Insurance Group of Companies (MIC) wrote to request that it not be included in appendix A. As earlier stated, NHTSA's proposal to include MIC was based on market share data provided by A.M. Best. MIC wrote that A.M. Best had erroneously indicated that, in 1991, MIC wrote $1.5 billion in auto premium insurance. MIC explained that it had written $1.2 billion in all types of insurance (including fire, home, worker's compensation, motor vehicle, etc.) in 1991, out of which motor vehicle coverage was only about 47 percent, or less than $600 million. The agency notes that $600 million is less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States in 1991. With its comments, MIC included a letter from A.M. Best, which acknowledged Best "could have done a better job" in reporting MIC's data than to include many types of MIC's warranty insurance into a broad classification named "auto warranty."

MIC's comment has cast doubt on the reliability of the A.M. Best data that NHTSA used to propose to include MIC as an insurer. The agency determines that the approximately $600 million that MIC has issued in motor vehicle insurance for 1991 is less than one percent of total U.S. premiums for all forms of motor vehicle insurance for 1991. Since, for these reasons, MIC does not meet the criteria for inclusion, NHTSA determines that MIC should not be added to appendix A.

Zurich Insurance Group also wrote to request that it not be included in appendix A. As a rationale, Zurich provided data showing that it held only .97 percent of total U.S. premiums for motor vehicle insurance for 1991. The agency agrees with Zurich that .97 percent is less than the minimum criterion of one percent of the national market share. Since Zurich does not meet the minimum criterion for inclusion, NHTSA determines that Zurich Insurance Group should not be added to appendix A.

Five other commenters, GE Capital Fleet Services, Enterprise Rent-A-Car Company, PHH Fleet America Corporation, U.S. Fleet Leasing, Inc. and Associates Leasing, Inc. asked to be excluded from appendix C because they did not self-insure at least 50,000 vehicles in their rental and/or leasing fleets. GE reported that LMV Leasing and McCullagh Leasing were purchased by and merged into Gelco Corporation. LMV and McCullagh were proposed in the April 1993 NPRM for inclusion in appendix C. Gelco Corporation (which does business as GE Capital Fleet Services) requested that GE Capital Fleet Services, McCullagh, and LMV, be exempted from inclusion in appendix C. GE Capital Fleet Services reported that it leases approximately 259,000 vehicles but self-insures fewer than 1,600.

Enterprise Rent-A-Car Company, and Associates Leasing, Inc. each stated that when it offered vehicles for rental or lease, it included as a condition of the lease or rental agreement that the lessor or renter provide its own motor vehicle insurance. Thus, Enterprise reported that it self-insures fewer than 50,000 vehicles. Associates reported that it self-insures no vehicles.

In its comments, PHH Fleet America stated that although it leases or manages over 300,000 vehicles, it self-insures only 4,300 vehicles. Similarly, U.S. Fleet Leasing, Inc. wrote that although it leases and manages over 80,000 vehicles, it self-insures fewer than 3,000.

Since neither GE Capital Fleet Services, LMV Leasing, Inc., McCullagh Leasing, Inc., Associates Leasing, Inc., Enterprise Rent-A-Car Company, PHH Fleet America Corporation, nor U.S. Fleet Leasing, Inc. self-insures more than 50,000 vehicles in its rental or leasing fleet, none of these companies meet the criteria the agency uses to determine that an insurer should be included in appendix C. Therefore, the agency determines that each of these companies should be removed from appendix C in the final rule.

In the NPRM, ARI, Inc. was inadvertently proposed for inclusion in appendix C. Since the NPRM listing of ARI, Inc. was an error, ARI, Inc. will not be listed in the final rule.

After reviewing the public comments and, as discussed above, making appropriate adjustments to appendices A, B, and C, NHTSA determines that each of the 17 insurers listed in appendix A, each of the 11 insurers listed in appendix B, and each of the 10 insurers listed in appendix C, are required to submit an insurer report under part 544. Each listed insurer must report on its experiences for calendar year 1991, and set forth the information required by 49 CFR part 544.

Effective Date

NHTSA finds for good cause that this rule should be made final effective immediately upon publication in the **Federal Register**, instead of 30 days thereafter. Section 615 of the Cost Savings Act (15 U.S.C. 2032) imposes a statutory duty on insurers to provide specified information in annual reports to NHTSA. The reports must be submitted by October 25 of each year, except as otherwise specified in this notice. This deadline makes it imperative that this regulation, making changes to the list of insurers that must submit reports, become effective as soon as possible.

Regulatory Impacts

1. Cost and Other Impacts

NHTSA has analyzed this rule and determined that it is not "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has also considered this notice under Executive Order 12866. This final rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are not statutorily eligible for an exemption are expressly required to file reports.

NHTSA does not believe that this rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for part 544. Using the cost estimates in the final regulatory evaluation for part 544, the agency estimates that it will cost any company that is added to appendix A about $50,000, any company added to appendix B about $20,000, and any company added to appendix C about $5,770. In this final rule, NHTSA includes one fewer company of appendix A, adds one company to appendix B, and includes six fewer companies in appendix C, compared to the last list of insurers published in June 1992.

The agency therefore estimates that the net effect of this final rule will be a cost savings to insurers as a group of approximately $64,620.

As noted above, a full regulatory evaluation was prepared for the final rule establishing 49 CFR part 544. Interested persons may wish to examine that evaluation in connection with this rule. Copies of that evaluation have been placed in Docket No. T–86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling at (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) This collection of information has been assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and has been approved for use through October 31, 1993. NHTSA has requested an extension of this collection of information. NHTSA's request is currently under consideration at OMB.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I certify that the final rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies on appendices A, B or C would be construed to be a small entity within the definition of the RFA. Section 615(a)(5)(C) of the Theft Act defines "small insurer" in part as any insurer whose premiums for motor vehicle insurance account for less than one percent of the total premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. In addition, the agency has exempted, by rule, all "self-insured rental and leasing companies" that have fleets in excess of 50,000 vehicles.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2030, provides that judicial review of this rule may be obtained pursuant to Section 504 of the Cost Savings Act, 15 U.S.C. 2004. The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended to read as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CNA Insurance Companies

Farmers Insurance Group
Geico Corporation Group
ITT Hartford Insurance Group (formerly Hartford Insurance Group)
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
State Farm Group
Travelers Insurance Group
United States F & G Group
USAA Group

3. Appendix B to part 544 is revised to read as follows:

Appendix B to Part 544—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Amica Mutual Insurance Company (Rhode Island)
Arbella Mutual Insurance (Massachusetts) [1]
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts) [1]
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Erie Insurance Group (Pennsylvania)
Kentucky Farm Bureau Group (Kentucky)
Southern Farm Bureau Casualty Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

[1] Indicates a newly listed company which must file a report beginning with the report for calendar year 1991.

4. Appendix C to part 544 is revised to read as follows:

Appendix C to Part 544—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
American International Rent A Car Corp./ ANSA
Avis, Inc.
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
National Car Rental System, Inc.
Penske Truck Leasing Company
Ryder Truck Rental, Inc. (both rental and leasing operations)
U-Haul International, Inc. (subsidiary of AMERCO)

Issued on: November 23, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–29224 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–59–M

49 CFR Part 571

[Docket No. 91–18; Notice 3]

RIN 2127–AF08

Federal Motor Vehicle Safety Standards; Impact Protection for the Driver From the Steering Control System

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: NHTSA published a final rule in May 1993 updating a reference in the safety standard that provides impact protection for the driver from the steering control system. NHTSA believed that this change would simply clarify how the test block would be positioned for compliance testing. However, in a petition for reconsideration, Ford Motor Co. (Ford) argued that it needed more leadtime to check its vehicles to see if this change would affect compliance of its vehicles with the safety standard. In response to this petition, this rule allows manufacturers to certify vehicles manufactured before September 1, 1996, with either the provisions of this standard as they existed before the May 1993 amendment or the provisions set forth in the May 1993 amendment.

DATES: *Effective Date:* This rule becomes effective January 3, 1994.

Petition Deadline: Any petitions for reconsideration of this rule must be received by NHTSA not later than January 3, 1994.

ADDRESSES: Any petitions for reconsideration of this rule should refer to the docket and notice number shown in the heading of this document and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke B. Harper, Office of Vehicle Safety Standards, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Harper can be reached by telephone at (202) 366–2264.

SUPPLEMENTARY INFORMATION: Standard 203, *Impact Protection for the Driver from the Steering Control System* (49 CFR 571.203), sets forth performance requirements to protect the driver from steering assembly-related injuries in a crash. More specifically, the standard specifies an impact test in which a block simulating the human torso strikes the steering assembly at 15 miles per hour (mph). The force measured on the steering column during the impact cannot exceed the specified limit.

The impact test in Standard 203 was previously conducted in accordance with the December 1965 version of the Society of Automotive Engineers (SAE) Recommended Practice J944. During NHTSA's compliance testing, problems arose because this SAE practice did not precisely specify the positioning of the body block relative to the steering wheel rim. To alleviate these problems, NHTSA proposed on June 6, 1991, that Standard 203 be updated to use the June 1980 version of SAE Recommended Practice J944. See 56 FR 26046.

In its proposal, NHTSA noted that the updated SAE Recommended Practice more precisely defines the positioning of the body block for compliance testing. NHTSA believed that using the newer 1980 version of SAE J944 would resolve the problems that had arisen for the agency in Standard 203 compliance testing. However, the agency noted in the proposal that following the procedures in the updated SAE Recommended Practice could align the body block approximately one-fourth of an inch lower than would be the case if the body block were positioned in accordance with the older version of the SAE Recommended Practice. The agency acknowledged that this minor positioning difference might cause some vehicle manufacturers to feel obligated to conduct some recertification testing, to be certain that this minor positioning difference did not result in formerly-complying steering systems no longer complying with the standard. Accordingly, NHTSA asked manufacturers to comment on this possibility and on the likely associated costs. The only other substantive difference in the two versions of SAE Recommended Practice J944 is that the newer 1980 version permits the use of any instrumentation capable of recording the required data, while the older 1965 version requires the use of a specified load cell.

The commenters, all of whom were vehicle manufactures, supported the proposal. In its comment, General Motors specifically stated that it "agree[s] with the agency that a ¼" change in elevation of the [body block] would be unlikely to cause the failure of a previously compliant design." Volkswagen commented that the incorporation of the newer 1980 version of the SAE Recommended Practice "is long overdue." Chrysler commented that it concurred with the agency's view that the ¼ inch change in elevation of the body block should not affect compliance test results.

Based on these comments, NHTSA adopted a final rule updating the version of SAE Recommended Practice

J944 referenced in Standard 203. 58 FR 26526, May 4, 1993. The only difference between what had been proposed and what was adopted in this final rule was that the final rule allowed optional compliance with either the 1965 or 1980 version of the SAE Recommended Practice for vehicles manufactured before March 1, 1994, and required use of the 1980 version of the SAE Recommended Practice for vehicles manufactured after that date. This optional compliance period was included in the final rule "to ensure that this amendment does not impose any burdens on any party;" 58 FR 26527.

Although Ford had not commented on the proposal to make this change to Standard 203, it filed a petition for reconsideration of this rule. In this petition, Ford asserted that referring to the updated version of the SAE Recommended Practice would increase compliance burdens on manufacturers. Ford offered three primary objections to the final rule.

First, Ford argued that the reference to the updated version of the SAE Recommended Practice would substantially increase the certification burden for manufacturers. This argument was presented as follows. The 1965 version of the SAE Recommended Practice mounts the column on a test fixture for the compliance test. The 1980 version of the SAE Recommended Practice allows testing with the steering column mounted on a test fixture, in a vehicle buck, or in the actual vehicle. Ford stated that the test results would vary slightly depending on which of the three testing modes was chosen. Thus, to be sure of compliance, Ford asserted that vehicle manufacturers would now have to conduct three tests, mounting the steering column on the test fixture, on a vehicle buck, and in the actual vehicle, as opposed to the single test on the test fixture that was sufficient under the 1965 version of the SAE Recommended Practice.

NHTSA did not find this argument persuasive. It is true that test results might not be precisely identical under each of the three test modes. However, the differences would be so small as to be insignificant for purposes of compliance with the standard. This is because the testing specified in Standard 203 and SAE's Recommended Practice measures the performance of the steering column, not the performance of the test fixture surrounding the steering column. Each test mode would be good surrogate for each other.

As an illustration of the insignificance of the effects of testing under different test modes, NHTSA has conducted its Standard 203 compliance testing using vehicle bucks since 1987. During this time, Ford's petition indicates that it has done its certification testing using a test fixture. There have been no instances where steering columns that Ford certified as complying failed NHTSA's compliance testing.

Indeed, General Motors addressed the subject of minor variations to the test procedures in its comments to this rulemaking action. Commenting on the proposal to lower the body block ¼ inch relative to the wheel during the compliance test, General Motors indicated that this minor change "would be unlikely to cause the failure of a previously compliant design. We believe that the result of such a change would fall within the range of production and test variation which should be accounted for in the design of the steering system." NHTSA Docket 91–18–N01–001. NHTSA finds this reasoning equally applicable to the insignificant variations among the three test modes allowed in the updated SAE Recommended Practice. Thus, the agency does not believe the reference to the updated SAE Practice will result in the increased certification burden alleged by Ford.

Although the agency was not persuaded by Ford's assertion that this change will result in increased burdens for manufacturers, NHTSA emphasized in both the proposal and final rule that the agency did not want this rule to impose any new burdens on manufacturers. The final rule included a provision allowing optional compliance with either the old or the updated SAE practice for vehicles manufactured before March 1, 1994.

This optional compliance period was added by the agency to allow the manufacturers time to conduct whatever testing or analyses they believed necessary to assure themselves that their previously certified steering column designs could still be certified as complying with the amended requirements of Standard 203. In response to the concerns expressed in Ford's petition, the agency has decided to extend the period for optional compliance with either the old or the updated version of Standard No. 203. This rule allows vehicles manufactured before September 1, 1996, to comply with either the old or the updated version of the standard.

Second, Ford asserted that using the updated version of the SAE Recommended Practice would make the Standard 203 no longer comply with the requirement in the National Traffic and Motor Vehicle Safety Act that safety standards "be stated in objective terms." Specifically, Ford objected to the 1980 version of the SAE Recommended Practice reference to a "vehicle buck."

This objection was not persuasive. The term "vehicle buck" used in the newer version of the SAE Recommended Practice is a commonly used automotive term. If Ford is uncertain how the general concept of a "vehicle buck" would be applied in the specific context of Standard 203 compliance testing, it may consult the Vehicle Preparation section of the compliance test procedure for Standard 203, a public document that provides detailed specifications for preparing a vehicle buck for this testing.

Third, Ford objected to the reference to the newer 1980 version of the SAE Recommended Practice, because that newer version uses the term "steering control system" to describe the component being tested, instead of the term "steering wheel assembly," which had been used in the 1965 version of the SAE Recommended Practice. Ford argued that the term "steering control system" is so broad that it might include numerous components of the suspension and steering gear, whereas the term "Steering wheel assembly" includes only the energy absorbing mechanisms in the steering wheel and column. Thus, Ford argued that NHTSA had inadvertently extended the reach of Standard 203 to test additional parts. Ford stated that it is "uncertain what components the agency would include in conducting a Standard 203 compliance test."

Ford's concern is misplaced. The agency's interpretations of what parts of the steering column and wheel are subject to Standard 203 were not affected by changing the reference to the newer version of the SAE Recommended Practice. Standard 203 regulates a vehicle's "steering control system" a term that is defined in S3 of the standard to be "the basic steering mechanism and its associated trim hardware, including any portion of a steering column assembly that provides energy absorption upon impact." That definition has not been changed. Further, NHTSA interprets the 1965 and 1980 versions of the SAE Recommended Practice to refer to the same components, i.e., all the components and mounting hardware of a steering column and wheel. Other vehicle components, such as the suspension system suggested by Ford, are not covered by Standard 203. Thus, substituting the 1980 version of the SAE Recommended Practice for the 1965 version did not broaden the coverage of the standard.

Ford indicated that it was particularly concerned with the effect of the changed reference on the testing of steering columns equipped with air bags. While S2 of Standard 203 exempts vehicles from this standard if they "conform to the frontal barrier crash requirements of Standard 208 by means of other than seat belt assemblies" (i.e., an air bag), Ford correctly noted that this exemption does not apply to all vehicles equipped with air bags. For example, some vehicles equipped with air bags cannot be certified as conforming to the Standard 208 crash test without using belts. Any such vehicles would not be excluded from the provisions of Standard 203.

The changed reference in Standard 203 to the updated version of the SAE Recommended Practice did not change the scope of Standard 203's exclusion for air bag-equipped steering systems. Air bag-equipped steering systems that do not conform to Standard No. 208's frontal barrier crash test requirements without using any seat belt assemblies were subject to Standard 203's performance requirements when the standard referred to the 1965 version of the SAE Recommended Practice. See, in the agency interpretations of Standard No. 203, the June 5, 1989, letter from NHTSA's Acting Chief Counsel to a party whose name was kept confidential. Such steering systems remain subject to Standard 203's performance requirements now that the standard refers to the 1980 version of the SAE Recommended Practice.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined not to be "significant" under either. NHTSA believes that most manufacturers are already using the more recent version of the SAE test procedure for their compliance testing. Therefore, extending the effective date for the new compliance test procedure does not impose any additional costs for most manufacturers. The agency has also determined that the economic and other impacts of this rule are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking in accordance with the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Few, if any, vehicle manufacturers are small entities within the meaning of the Act. Small organizations and small governmental units will not be affected, since updating the standard's existing test procedure will not effect the purchase price of new vehicles. Accordingly, the agency has not prepared a regulatory flexibility analysis.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act. The agency has determined that this update of the existing test procedure will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 12612, and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule does not have any retroactive effect. Whenever a Federal motor vehicle safety standard is in effect, 15 U.S.C. 1392(d) provides that a State may not adopt or maintain in effect a safety standard applicable to the same aspect of performance that is not identical to the Federal standard. A procedure for seeking judicial review of rules establishing, amending, or revoking Federal motor vehicle safety standards is set forth in 15 U.S.C. 1394. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.203 is amended by revising the introductory text of S5.1 to read as follows:

§ 571.203 Standard No. 203; Impact protection for the driver from the steering control system.

* * * * *

S5.1 Except as herein provided, the steering control system of any vehicle to which this standard applies shall be impacted in accordance with S5.1(a). However, the steering control system of any such vehicle manufactured on or before August 31, 1996, may be impacted in accordance with S5.1(b).

* * * * *

Issued on November 23, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–29225 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 58, No. 229
Wednesday, December 1, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–41–AD]

Airworthiness Directives: Beech Aircraft Corp. Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 92–06–09, which currently requires repetitively inspecting the engine trusses for cracks on Beech Model 1900 and certain Model 1900C airplanes, repairing or replacing any cracked engine truss, and installing reinforcement doublers. That AD also provides the option of installing an engine truss of improved design as terminating action for the repetitive inspections. Since issuing that AD, the FAA has received several reports of these improved design engine trusses cracking in Area A of the engine truss. The proposed action would retain the currently required repetitive inspections, but would shorten the repetitive interval in Area A and would eliminate the inspection-terminating replacement option; and also would incorporate the Beech Models 1900C and 1900D airplanes that have engine trusses of this same type design installed at manufacturer. The actions specified by the proposed AD are intended to prevent failure of the engine truss assembly caused by a cracked engine truss.

DATES: Comments must be received on or before February 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–41–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4128; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–41–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–41–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 92–06–09, Amendment 39–8189 (57 FR 8060, March 6, 1992), currently requires repetitively inspecting the engine trusses for cracks on Beech Model 1900 and certain Model 1900C airplanes, repairing or replacing any cracked engine truss, and installing reinforcement doublers. That AD also provides the option of installing an engine truss of improved design, part number (P/N) 129–910032–79, as terminating action for the repetitive inspections. The inspections are accomplished in accordance with Beech Service Bulletin (SB) No. 2255, Revision III, dated November 1991; and the improved design engine truss installation is accomplished by incorporating Beech Kit 114–9036–1 or Beech Kit 114–9036–3.

Since AD 92–06–09 has become effective, the FAA has received a report of an improved design engine truss breaking and five others cracking on Beech Model 1900C airplanes. These improved design engine trusses, 129–910032–79, were installed on Beech Model 1900D and certain Model 1900C airplanes at manufacturer and on other Model 1900C airplanes by field retrofit; therefore AD 92–06–09 did not affect these airplanes. Even though the FAA has received no reports of trusses cracking on the Model 1900D airplanes, they are equipped with the same type design engine trusses where cracks have been reported.

In addition, Figure 1 of SB No. 2255 specifies areas that are repetitively reinspected. The FAA has received reports of small cracks forming in Area A at around 300 hours TIS after the initial inspection. These particular cracks are easier to repair when they are small, and, detecting and repairing these cracks early could prevent a more costly replacement.

Beech has revised SB No. 2255 to the Revision V level, which incorporates minor editorial corrections of Revision IV, adds the Models 1900C and 1900D airplanes that have a P/N 129–910032–79 engine truss installed, and changes the inspection schedule. This service information details procedures for inspecting the engine trusses on Beech Models 1900, 1900C, and 1900D airplanes.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) the repetitive inspections required by AD 92–06–09 should be extended to the improved design engine trusses, P/N 129–910032–79, that are installed on Beech Models 1900 and 1900C airplanes; (2) the repetitive inspections for all affected airplanes should begin at 1,400 hours TIS accumulated on the engine truss and should be shortened to 100-hour TIS intervals in Area A of the engine truss; (3) these inspections should be required on the Beech Model 1900D airplanes to ensure that these trusses are not cracking; and (4) AD action should be taken in order to prevent failure of the engine truss assembly caused by a cracked engine truss.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech Models 1900, 1900C, and 1900D airplanes of the same type design, the proposed AD would supersede AD 92–06–09 with a new AD that would (1) retain the repetitive inspection requirements of AD 92–06–09, extend the applicability to include Beech Models 1900C and 1900D airplanes that have a P/N 129–910032–79 engine truss installed, and shorten the repetitive inspection interval of Area A of the engine truss to 100 hours TIS; and (2) eliminate the option of terminating the repetitive inspections on the Beech Model 1900 and 1900C airplanes if an improved design engine truss, 129–910032–79, is installed. The proposed inspections would be accomplished in accordance with Beech SB No. 2255, Revision V, dated October 1993.

The FAA estimates that 279 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 16 workhours per airplane to accomplish the proposed inspection (one-time in all applicable areas), and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $245,520. AD 92–06–09 required the same inspections on 202 Beech Model 1900 and 1900C airplanes. The only additional cost impact on U.S. operators by the proposed action than that currently required by AD 92–06–09 is the proposed inspections on 77 Beech Model 1900C and 1900D airplanes or $67,760 (16 workhours × $55 × 77 airplanes). These figures assume that none of the operators of the affected airplanes have accomplished the proposed initial inspection, and do not account for the cost of repetitive inspections.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–06–09, Amendment 39–8189 (57 FR 8060, March 6, 1992), and by adding the following new airworthiness directive:

Beech Aircraft Corporation: Docket No. 93–CE–41–AD. Supersedes AD 92–06–09, Amendment 39–8189.

Applicability: Models 1900, 1900C, and 1900D airplanes (all serial numbers), certificated in any category.

Compliance: Required initially upon accumulating 1,400 hours time-in-service (TIS) on the engine truss or within the next 100 hours TIS, whichever occurs later, unless already accomplished (compliance with AD 92–06–09), and thereafter as indicated.

To prevent failure of the engine truss assembly caused by a cracked engine truss, accomplish the following:

(a) Inspect the engine truss for cracks at the weld joints in accordance with the Accomplishment Instructions section of Beech Service Bulletin (SB) 2255, Revision V, dated October 1993.

(b) If any cracks are found, prior to further flight, repair the crack or replace the engine truss with one of the applicable truss part numbers specified in the following table, and reinspect the truss at the times specified in paragraph (d) of this AD:

Truss part No.	Affected models	Instructions
118–910025–37 (serviceable truss)	1900 and 1900C	Applicable maintenance manual.
18–910025–121 (serviceable truss)	1900 and 1900C	Applicable maintenance manual.
129–910032–79	1900, 1900C and 1900D	Beech Kit 114–9036–1 or 114–9036–3.

(c) If any engine truss, P/N 114–910025–1 or P/N 118–910025–1, that is not equipped with reinforcement doublers at the engine firewall attachment bosses is installed on Beech Models 1900 or 1900C airplanes, prior to further flight, install reinforcement doublers in accordance with the Accomplishment Instructions section of Beech SB No. 2255, Revision V, dated October 1993, and reinspect thereafter as indicated in paragraph (d) of this AD.

Note 1: Installation of an improved design engine truss, P/N 129–910032–79, on any of the affected airplanes does not eliminate the repetitive inspection requirement of this AD.

(d) Reinspect the areas of the engine truss that are specified in Figure 1: "Engine Truss Inspection Areas" in Beech SB No. 2255, Revision V, dated October 1993, in accordance with the following schedule:

Inspection area	Inspection interval hours TIS
A	100
B	600
C	3,000

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(g) Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

(h) This amendment supersedes AD 92–06–09, Amendment 39–8189.

Issued in Kansas City, Missouri, on November 22, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–29243 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–ANE–57]

Airworthiness Directives; International Aero Engines AG Model V2500–A1 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to International Aero Engines AG Model V2500–A1 engines. This proposal would require the installation of damping wires and anti-fret coating on rotor blades. This proposal is prompted by reports of seven stage 7 and 8 high pressure compressor (HPC) blade failures and subsequent engine inflight shutdowns. The actions specified by the proposed AD are intended to prevent HPC blade failures, which could result in engine inflight shutdowns.

DATES: Comments must be received by January 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ANE–57, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from International Aero Engines (IAE) AG, Corporate Center II, 628 Hebron Avenue, Glastonbury, CT 06033–2595. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7135, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–ANE–57." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–57, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received reports of seven occurrences of high pressure compressor (HPC) stage 7 and 8 blade failures on International Aero Engines AG (IAE) Model V2500–A1 engines. Each failure subsequently resulted in an engine inflight shutdown (IFSD). A suspect population of engines with a high failure rate of stage 7 and 8 blades has been identified. In order to prevent HPC blade failures and a resultant engine IFSD for this cause, a means was found to reduce the vibratory stresses by introducing damping wires at stages 7 and 8 rotor blades and an anti-fret coating to stages 6, 7, and 8 blade dovetail roots. Mechanical rig, strain gauge, and endurance testing successfully demonstrated the damping effect of the wires and the improvement gained by application of the anti-fret coating. This condition, if not corrected, could result in HPC blade failures resulting in an engine IFSD.

The FAA has reviewed and approved the technical contents of IAE Service Bulletin (SB) V2500–ENG–72–0161, Revision 3, dated October 14, 1993, that describes procedures for the modification of HPC disks and blades by the installation of damping wires and an anti-fret coating.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the installation of damping wires and an anti-fret coating to HPC disks and blades. A compliance end-date of September 30, 1994, is proposed to ensure timely compliance. Based upon engine shop visit rates, a compliance end-date of September 30, 1994, will ensure timely compliance while minimizing the number of forced engine removals. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 204 IAE Model V2500–A1 engines of the affected design in the worldwide fleet. The FAA estimates that 19 engines installed in aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 120 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $57,990 per engine. Based on these figures, the total cost

impact of the proposed AD on U.S. operators is estimated to be $1,227,210.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

International Aero Engines AG: Docket No. 93–ANE–57.

Applicability: International Aero Engines AG (IAE) Model V2500–A1 engines, engine serial numbers V0122 through V0322, except V0312 and V0314, installed on but not limited to Airbus A320 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure compressor (HPC) stage 7 and 8 rotor blade failures, accomplish the following:

(a) Install damping wires and anti-fret coating in accordance with IAE Service Bulletin No. V2500–ENG–72–0161, Revision 3, dated October 14, 1993, at the next shop visit, or by September 30, 1994, whichever occurs first.

(b) A shop visit is defined as induction of an engine into a shop for the conduct of maintenance.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 19, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–29375 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–ASW–35]

Proposed Establishment of Class E Airspace: Gonzales, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Louisiana Regional Airport. A Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedure (SIAP) has been developed at Louisiana Regional Airport, and controlled airspace extending from 700 feet above ground level (AGL) is needed for aircraft executing the approach. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending from 700 feet or more AGL is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Louisiana Regional Airport in Gonzales, LA.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–35, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement:

"Comments to Airspace Docket No. 93–ASW–35." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue

Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish controlled airspace extending upward from 700 feet above ground level at Louisiana Regional Airport in Gonzales, LA. A Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedure (SIAP) has been developed for Louisiana Regional Airport. Controlled airspace extending from 700 feet above ground level (AGL) is needed for instrument flight rule (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area" and airspace extending upward from 700 feet or more above ground level is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Louisiana Regional Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas for airports extending from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW LA E5 Gonzales, LA [New]

Louisiana Regional (latitude 30°10'17" N., longitude 90°56'25" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Louisiana Regional Airport.

* * * * *

Issued in Fort Worth, TX on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29296 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–50]

Proposed Modification of Class E Airspace: Dallas/Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Dallas/Fort Worth, TX. An amendment to the Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedure (SIAP) has been implemented at Cleburne Municipal Airport, TX. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed for aircraft executing the new VOR/DME–A approach. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet AGL will use the term "Class E airspace" for general controlled airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Cleburne, TX.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–AWS–50, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76 193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76 193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,

environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "**ADDRESSES.**" Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–50." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76 193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Dallas/Fort Worth, TX. An amendment to the VOR/DME–A standard instrument approach procedure (SIAP) serving the Cleburne Airport has necessitated the need to amend the area for all instrument flight rules (IFR) operations at Cleburne Municipal Airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 AGL is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Cleburne, TX. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by references, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 13 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW TX E5 Dallas/Fort Worth, TX [Modify]

Dallas/Fort Worth Regional Airport, TX
(lat. 32°53'47"N., long, 97°02'29"W.)
McKinney Municipal Airport, TX
(lat. 33°10'49"N., long. 96°35'26"° W.)
Rockwall Municipal Airport, TX
(lat. 32°55'50"N, long. 96°26'08" W.)
Blue Ridge VORTAC
(lat. 33°17'00"N., long. 96°21'54"W.)
Mesquite, Phil L. Hudson Municipal Airport, TX
(lat. 32°44'54"N., long. 96°31'50"W.)
Mesquite RBN
(lat. 32°48'32"N., long. 96°31'44"W.)
Phil L. Hudson ILS Localizer
(lat. 32°44'21"N., long. 96°31'50"W.)
Lancaster Airport, TX
(lat. 32°34'45"N., long. 96°43'09"W.)
Lancaster RBN
(lat. 32°34'39"N., long. 96°43'18"W.)
Dallas/Fort Worth VORTAC
(lat. 32°51'57"N., long 97°01'41"W.)
Fort Worth Spinks Airport, TX
(lat. 32°33'51"N., long. 97°18'35"W.)
Cleburne Muncipal Airport
(lat. 32°21'17"N., long. 97°26'03"W.)
Bourland Field, TX
(lat. 32°34'47"N., long. 97°35'34"W.)
Acton VORTAX
Lat. 32°26'05"N., long. 97°39'50"W.)
Granbury Municipal Airport, TX
(lat. 32°26'40"N., long 97°49'01"W.)
Weatherford, Parker County Airport, TX
(lat. 32°44'46"N., long. 97°40'57"W.)
Bridgeport Municipal Airport, TX
(lat. 33°10'28"N., long. 97°49'42"W.)
Bridgeport VORTAC
(lat. 33°14'16"N., long. 97°45'59"W.)
Decatur Municipal Airport, TX
(lat. 33°15'25"N., long 97°34'54"W.)

That airspace extending upward from 700 feet above the surface within a 30-mile radius of Dallas/Fort Worth International Airport and within a 6.5-mile radius of McKinney Municipal Airport and within a 6.3-mile radius of Rockwall Municipal Airport and within 1.6 miles each side of the 190° radial of the Blue Ridge VORTAC extending from the 6.3-mile radius to 10.8 miles north of the airport and within a 6.5-mile radius of Phil L. Hudson Airport and within 8 miles east and 4 miles west of the 001° bearing from the Mesquite RBN extending from the 6.5-mile radius to 19.7 miles north of the airport and within 1.7 miles each side of Phil L. Hudson ILS Localizer south course extending from the 6.5-mile radius to 11.1 miles south of the airport and within a 6.5-mile radius of the Lancaster Airport and within 8 miles west and 4 miles east of the 129° bearing from the Lancaster RBN extending from the 6.5-mile radius to 16 miles southeast of the RBN and within 8 miles northeast and 4 miles southwest of the 144° radial of the Dallas/Fort Worth VORTAC extending from the 30-mile radius of Dallas/Fort Worth International Airport to 35 miles southeast of the VORTAC and within a 6.5-mile radius of Fort Worth Spinks Airport and within 8 miles east and 4 miles west of the 178° bearing from the airport extending from the 6.5-mile radius to 21 miles south of the airport and within a 6.9-mile radius of Cleburne Municipal Airport and within 3.6 miles each side of the 112° radial of the Acton VORTAC extending from the 6.9-mile radius of the Cleburne Municipal Airport to 12.2 miles northwest of the airport and within a 6.5-mile radius of Bourland Field and within a 6.3-mile radius of Granbury Municipal Airport and within a 6.3-mile radius of Parker County Airport and within 8 miles east and 4 miles west of the 357° radial of the Acton VORTAC extending from

the 6.3-mile radius to 21.4 miles south of the airport and within a 6.3-mile radius of Bridgeport Municipal Airport and within 1.6 miles each side of the 220° and 040° radials of the Bridgeport VORTAC extending from the 6.3-mile radius to 10.6 miles northeast of the airport and within a 6.3-mile radius of Decatur Municipal Airport and within 1.5 miles each side of the 083° radial of the Bridgeport VORTAC extending from the 6.3-mile radius to 9.2 miles west of the airport.

* * * * *

Issued in Fort Worth, TX, on November 8, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29295 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1303

Termination of Regulatory Investigation; Lead in Paint

AGENCY: Consumer Product Safety Commission.

ACTION: Termination of regulatory investigation.

SUMMARY: The Commission announces that it has terminated its regulatory investigation of whether its lead-in-paint regulations should be revised to lower the allowable lead content in paint and other articles subject to the regulations. The Commission terminated this investigation because the information obtained to date shows that there is only a small risk of adverse health effects from the lead content of currently marketed paints. In addition, there is insufficient information showing that the benefits of further reductions of lead in paint would bear a reasonable relationship to the costs of that action.

FOR FURTHER INFORMATION CONTACT: Brian Lee, Ph.D., D.A.B.T., Project Manager, Directorate for Health Sciences, Division of Health Effects, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504-0994.

SUPPLEMENTARY INFORMATION:

A. Background

Since 1976, the Commission has had a regulation banning (1) "lead-containing paint," (2) toys and other articles intended for use by children that bear lead-containing paint, and (3) furniture articles for consumer use that bear lead-containing paint. 16 CFR part 1303. The regulation defines "lead-containing paint" as "paint or other similar surface coating materials containing lead or lead compounds and in which the lead content (calculated as lead metal) is in excess of 0.06 percent by weight of the total nonvolatile content of the paint or the weight of the dried paint film." 16 CFR 1303.2(b)(2). A number of non-consumer coatings and low-risk products are exempted from the ban. 16 CFR 1303.3.

The maximum allowable lead content of 0.06 percent was established by the Lead Based Paint Poison Prevention Act, 48 U.S.C. 4801 *et seq.*, as amended by the National Consumer Health Information and Health Promotion Act of 1976 (Pub. L. 94-317, 90 Stat. 705-706). The 0.06 percent level had been recommended by the American Academy of Pediatrics and affirmed by the National Academy of Sciences, based on an estimate of the amount of lead required to cause lead poisoning in children and on a number of assumptions about the potential exposure of children to lead in paint.

Recent data, however, indicate that humans, particularly young children, may be more sensitive to the adverse health effects of lead than was believed when the 0.06 percent level was recommended in the early 1970's. The Commission's staff determined that applying the new toxicity data to the exposure assumptions used to derive the 0.06 percent level would result in a lead-limit level of 0.01 percent. Although the 0.06 percent level has had the effect of eliminating intentionally-added lead from paint, the Commission's staff became concerned about whether the 0.06 percent level still provided adequate protection of the public, and especially children, from the risk of lead poisoning.

On April 30, 1992, the Commission published a Notice of Regulatory Investigation ("NRI") in the **Federal Register** announcing that the Commission was investigating whether to revise its lead-in-paint regulations in view of the recent findings regarding the effects of exposure to lead. 57 FR 18418. The NRI explained the issues in more detail and cited relevant source documents. In the NRI, the Commission solicited comments and information concerning a number of topics that would have to be addressed if it was found necessary to amend the ban of lead-containing paint.

B. Lead Levels in Currently-Marketed Paint

In order to determine the lead levels in currently-marketed paints, the Commission's staff conducted a nationwide sampling of the paint market. Of the 433 samples tested by the Commission's Health Sciences Laboratory, 90 percent contained less than 0.01 percent lead and 98.6 percent contained less than 0.02 percent lead. The average lead content was 0.004 percent. Only one sample was found to be over the current 0.06 percent limit, and this was referred to the Commission's Office of Compliance and Enforcement for possible corrective action.

These results were consistent with tests of 31 samples from the Washington, DC, area reported by the National Institute of Standards and Technology ("NIST") in 1992. The results are also consistent with the analysis of eight samples of paint colorants conducted by Consumer and Corporate Affairs, Canada.

C. Comments Received on the Notice of Regulatory Investigation

The Commission received 15 comments on the NRI. Most of these related to the health effects of exposure to lead. No information was received that would allow an estimate of the number of children who ingest lead paint or of the amounts of lead ingested.

One comment provided valuable information about estimating the amount of lead to which children are exposed with a currently marketed anticorrosion coating. This comment provided a calculation procedure for estimating the weight of a coating. Using the procedure with typical application rates for currently marketed architectural paint, the staff estimated that the weight of currently marketed paint was about half the weight that was assumed in the development of the 0.06 percent level. Application of this estimate and the more recent information on the health effects of lead to the methodology used to compute the 0.06 percent level resulted in an estimated allowable level of 0.02 percent. No other information was received that would allow any further refinement of the allowable level. Additionally, no other information was received that confirmed or invalidated the appropriateness of exposure assumptions used in the computational methodology.

No comments were received that would justify any change in the types of products that are currently exempted from the lead-in-paint regulations. Comments were received recommending that the standard should be based on "bioavailable" lead, rather than on the total amount of lead in the dried film. There is insufficient information about the various factors

that might affect bioavailability to justify such an approach.

D. Conclusion

The Commission concludes from the information discussed above that there would be very little benefit from a reduction of the allowable level of lead in paint from the current level of 0.06 percent to the revised recommended level of 0.02 percent. As noted above, the lead content of 98.6 percent of currently marketed paint already is below the 0.02 percent level, and the average level is 0.004 percent. In addition, the significance to the health of children of the slight percentage of marketed paint that exceeds the recommended level is not known. The statute under which the lead-in-paint regulation was issued (the Consumer Product Safety Act, 15 U.S.C. 2051-2084) requires that, in order to lower the level of paint by regulation, the Commission would have to obtain substantial evidence showing that the benefits of the regulation bear a reasonable relationship to its costs. This would require at least a minimum estimate of the benefits resulting from lowering the allowable limit. The sorts of assumptions used to arrive at the Congressionally-directed level of 0.06 percent would not provide this type of estimate, and other information that would enable such an estimate is not expected to be available in the foreseeable future.

For these reasons, the Commission concludes that the available information does not show that there is an unreasonable risk of lead toxicity associated with currently marketed paints. In addition, the available information does not show that the benefits of further reductions of lead levels in paints would bear a reasonable relationship to the costs required to achieve the reductions. Significant additional information on these topics is not expected to be able to be obtained in the foreseeable future. Accordingly, the Commission is terminating its investigation of whether to change the allowable limit of lead in paint. If information becomes available in the future showing that Commission action is needed to reduce an unreasonable risk of injury to consumers, however, the Commission will take appropriate action.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93-29447 Filed 11-30-93; 8:45 am]

BILLING CODE 6355-01-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141 and 388

[Docket No. RM94-5-000]

Treatment of Responses to FERC Form No. 580 Interrogatories

November 24, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission proposes to amend its regulations to codify an existing requirement for each public utility with a steam-electric generating station of 50 megawatts or more to file responses to FERC Form No. 580 (Form 580) interrogatories and to require this filing by both hard copy and electronic filing. Additionally, the proposal provides that such responses would not qualify for claims of privilege under the Commission's rules. Finally, the Commission proposes to make public all past responses to Form 580 interrogatories.

DATES: Written comments must be received by the Commission by January 18, 1994.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-2046.

Douglas E. Matyas (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0890.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend 18 CFR part 141 to add § 141.10, which codifies the Commission's existing requirement, established in Docket No. IN79-6, requiring the submittal of responses to FERC Form No. 580 (Form 580), "General Interrogatory on Fuel and Energy Purchase Practices," and also proposes to add a provision explicitly disqualifying responses to Form 580 interrogatories from claims of privilege under 18 CFR 388.112.[1]

Additionally, the Commission proposes to make public all past responses to Form 580 interrogatories, but is providing public utilities who have submitted responses to past Form 580 interrogatories subject to a request for privileged treatment with an opportunity to present reasons why this information should not now be made available to the public.

The Commission is also proposing requiring the submittal of Form 580 responses by both hard copy and electronic filing. Therefore, we also invite comments on the best format to be required for such filings, and on whether the electronic filing of Form 580 responses and attachments, by the submittal of computer disks or by the use of imaging or other processes, would be practicable or unduly burdensome.

Finally, the Commission seeks comments concerning whether a completely different information collection scheme would better permit the Commission to carry out its statutory responsibilities.

[1] The proposed disqualification from claims of privileged treatment presented in this notice of proposed rulemaking (NOPR) pertains only to responses to Form 580 interrogatories. It does not apply to any other forms or limit any other requests for privileged treatment under § 388.112.

As a matter of convenience, for the purposes of this discussion, a request for privileged treatment and a request for confidential treatment will be used interchangeably.

II. Public Reporting Burden

The Commission estimates the total annual public reporting burden associated with this reporting requirement to be 5940 hours for Form 580. This reporting burden is based on an estimate of 90 average hours for 66 public utilities (132 on a biennial basis) to complete Form 580. These estimates include the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This estimate does not reflect that affected public utilities are already required to file these responses under the Commission's ongoing investigation in Docket No. IN79–6.

Send comments regarding these burden estimates or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission].

III. Background

A. Form 580

The Public Utility Regulatory Policies Act of 1978 (PURPA),[2] inter alia, amended section 205 of the Federal Power Act[3] by adding subsection (f)(2) which requires the Commission to review, at least once each two years, the practices of public utilities using automatic adjustment clauses to ensure that each such public utility makes efficient use of resources (including fuel).[4] In response, the Commission instituted an investigation, in Docket No. IN79–6, of practices under automatic adjustment clauses.[5]

Pursuant to this investigation, the Commission (through its staff) has issued interrogatories (Form 580 and its predecessors)[6] every two years.[7]

Interrogatories issued for the periods 1979–1981, 1982–1983, 1984–1985, and 1986–1987 advised responding public utilities that their responses would be available to the public and would not be subject to a claim of confidentiality. Nevertheless, requests for confidentiality were filed by a small number of responding public utilities.[8]

Interrogatories for the period 1988–1989 stated:

> While the Commission generally does not consider the data confidential, it will entertain specific requests for confidential treatment to the extent permitted by law.

More than 50 percent of the approximately 135 public utilities (68 utilities) responding for the period 1988–1989 requested confidential treatment.

Subsequent interrogatories have contained similar disclaimers, and produced similar responses.

B. Section 388.112

Section 388.112 governs requests for privileged treatment of documents submitted to the Commission. A request for privileged treatment under § 388.112 is made by claiming that all or some of the information submitted is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (FOIA)[9] and that it should be withheld from public disclosure.[10]

A public utility requesting privileged treatment for information submitted to the Commission under § 388.112 is required to submit two versions of its response: One marked "privileged" with a full response including portions claimed to be confidential; and an expurgated version containing a statement that information has been removed from the response shown in the public file. The version of the response marked "privileged" is placed in the nonpublic file, while the request for confidential treatment is pending. The complete, unedited document remains in the nonpublic file until such time as a request for disclosure is made and the Commission decides to make the document public pursuant to the procedures specified in § 388.112, or until the Commission on its own initiative makes a determination to release information as necessary to carry out its jurisdictional responsibilities.

IV. Discussion

A. Problems With Respect to Form 580 and Proposed Solution

Although the Commission reserves final judgment pending its review of any forthcoming comments, the Commission is issuing this NOPR in response to various problems that it has observed with the existing procedures.

Care must be exercised, and careful procedures implemented, to assure that information claimed to be privileged is not inadvertently placed in the public file or the Commission's record information management system. As requests for privileged treatment have increased, the administrative burden on the Commission of maintaining voluminous nonpublic files and assuring that these materials remain privileged has increased proportionally. The increasing volume of requests for privileged treatment of Form 580 responses has thus created increasing administrative problems for the Commission.

Moreover, absent a determination on the merits of requests for privileged treatment, these materials accumulate indefinitely. In addition, in the event a claim of privilege is unwarranted or where the need for privilege has expired,[11] continued privileged treatment clogs the Commission's nonpublic files and unnecessarily blocks public access to these materials.

Another concern arising from claims for privileged treatment of Form 580 responses is that assertions of privilege are preventing the information from being used by the Commission, its advisory and trial staffs, participants in Commission proceedings, and the public, as fully and productively as would be the case were no restrictions placed on the availability of the information. For example, in conducting the biennial reviews, advisory staff has found it useful to discuss these matters with parties outside the Commission, e.g., energy consultants, fuel suppliers, and various state and federal agencies. However, the restrictions placed on the use of the Form 580 responses, through requests for privileged treatment, have made such discussions increasingly difficult, if not entirely impermissible.

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[2] 16 U.S.C. 2601, *et seq.*

[3] 16 U.S.C. 824d.

[4] 16 U.S.C. 824d(f)(2).

[5] See Investigation of Practices under Automatic Adjustment Clauses, 7 FERC ¶ 61,090 (1979); see also Consolidated Edison Company of New York, 39 FERC ¶ 61,329 (1987); Kentucky Utilities Company, 29 FERC ¶ 61,159 at 61,338 (1984).

[6] Form 580 was preceded by FERC Form Nos. 560 and 565. The Form 580 interrogatories are currently mailed to the over 130 public utilities with significant fuel trades and with wholesale rates that may contain automatic adjustment clauses.

[7] Each round of interrogatories is provided to the Office of Management and Budget (OMB), see 5 CFR part 1320, which, in turn, provides for public notice, 5 CFR 1320.15, and an opportunity for the public to inspect and comment, 5 CFR 1320.19. This process occurs prior to the issuance of each round of interrogatories.

[8] There were a few requests for confidential treatment of the 1979–1981 filings, and approximately eight to ten requests for confidential treatment of the 1982–1983 filings, 19 requests for confidential treatment of the 1984–1985 filings, and 40 requests for confidential treatment of the 1986–1987 filings.

[9] 5 U.S.C. 552.

[10] 18 CFR 388.112.

[11] The adverse competitive impact of the disclosure of financial information declines as the information becomes stale. See, e.g., Western Systems Power Pool, 64 FERC ¶ 61,063 at 61,603 (1993). Form 580 responses report on events which occurred 6–18 months prior to the filing of the information.

Additionally, and most importantly, claims of privilege can adversely affect our ability to ensure that rates are just and reasonable. See 16 U.S.C. 824d, 824e (1988). In evaluating the prudence of non-affiliate fuel purchases and the reasonableness of non-affiliate fuel prices passed through to ratepayers, the Commission has looked to whether a reasonable person would have made, in good faith, under the same circumstances, and at the relevant point in time the same decisions and incurred the same costs. See *New England Power Company*, Opinion No. 231, 31 FERC ¶ 61,047 at 61,081–84, *reh'g denied*, Opinion No. 231–A, 32 FERC ¶ 61,112 (1985), *aff'd*, 800 F.2d 280 (1st Cir. 1986); *accord*, *Indiana and Michigan Municipal Distributors Association* v. *Indiana Michigan Power Company*, Opinion No. 382, 62 FERC ¶ 61,189 at 62,237–41, *reh'g denied*, Opinion No. 382–A, 65 FERC ¶ 61,087 (1993). In evaluating affiliate fuel purchases and affiliate fuel prices passed through to ratepayers, the Commission has used an objective, comparative market price standard. See *Public Service Company of New Mexico*, Opinion No. 133, 17 FERC ¶ 61,123 at 61,245–46 (1981), *reh'g denied*, Opinion No. 133–A, 18 FERC ¶ 61,836 (1982), *aff'd*, 832 F.2d 1201 (10th Cir. 1987); *accord*, 62 FERC at 62,241–46. The information collected on Form 580 is vitally important to conducting these evaluations. Claims of privilege can effectively prevent these data from being made public so that ratepayers, in the first instance, are unable to evaluate whether the public utility that supplies them power and energy has, for example, acted imprudently or whether the fuel prices charged in rates are unreasonable. Similarly claims of privilege can complicate and even, as a practical matter, bar the use of the data by trial staff, ratepayers, or other parties in contested on-the-record proceedings that have been initiated. This especially is true where information about one company's fuel purchasing practices and prices might be relevant to a proceeding regarding the activities of a second company (e.g., to develop comparative market price data for such utilities). That is, § 388.112 requires time-consuming notice procedures before using data for which privileged treatment has been requested.[12] This may effectively preclude the use of the data if the proceedings cannot be delayed pending the participants' seeking utility approval, or, alternatively, Commission action, as currently required under § 388.112.

We consider these problems—and particularly the effect on the ability to evaluate and challenge fuel purchasing decisions and fuel prices—to be serious, because, as noted, we collect the Form 580 responses to assist us in complying with our statutory responsibilities. To the extent that nondisclosure inhibits the use of this information to help assure that public utilities with automatic adjustment clauses employ efficient fuel and purchase power procurement practices, we are inclined to require public disclosure of this information. As a consequence, the Commission proposes that responses to Form 580 interrogatories be disqualified from the categories of materials for which claims of privileged treatment may be asserted under § 388.112.

B. Request for Comments

This NOPR gives notice of the Commission's intention to add § 141.10 which: (1) codifies by regulation the requirement that public utilities file responses to Form 580 interrogatories, which the Commission has previously ordered in the ongoing investigation in Docket No. IN79–6;[13] and (2) disqualifies responses to Form 580 interrogatories from the category of materials for which a filing public utility may seek privileged treatment under § 388.112.

The NOPR does not prescribe the content of the interrogatories, as this would impede the ability to modify the interrogatories in a timely manner to ensure that the Commission receives the information needed to carry out its statutory responsibilities, and because interested persons may participate in the OMB review and clearance process concerning each round of interrogatories.[14]

As determinations of whether to grant privileged treatment are influenced by FOIA's exemption from mandatory disclosure for trade secrets and privileged or confidential information, one factor relevant to the issues to be addressed in the comments is the applicable case law regarding the protection of confidential or privileged information under FOIA.[15] FOIA provides an exemption from mandatory disclosure for "trade secrets and commercial or financial information obtained from a person and privileged or confidential."[16] This exemption is intended to protect the interests of both the government and submitters of information. It seeks to ensure that agencies will continually be able to obtain necessary commercial and financial information so that they will be able to perform their statutory responsibilities efficiently and effectively.[17] This exemption also is intended to provide protection to submitters of information, consistent with the needs of agencies to perform their statutory responsibilities, from competitive disadvantages which could result from disclosure.[18]

Prior to taking final action on this proposed rulemaking, the Commission is inviting comments from interested persons on a range of issues. The Commission specifically invites comments on the following issues: (1) The merits of the proposed rulemaking; (2) the benefits and/or drawbacks of the complete or partial release of future responses to Form 580 interrogatories; (3) whether there is evidence that public disclosure of responses to future Form 580 interrogatories would cause actual competitive injury to filing public utilities;[19] and (4) the best format for the electronic filing of Form 580 responses, and whether the electronic filing of Form 580 responses and attachments, by the submittal of computer disks or by the use of imaging or other processes,

[12] See 18 CFR 388.112(c)(2).

[13] This NOPR leaves intact the Commission's delegation, in Docket No. IN79–6, to its staff of the responsibility for formulating the content of the interrogatories.

[14] See *supra* notes 7, 13.

[15] An exemption from mandatory disclosure does not foreclose agency disclosure when the benefits of disclosure outweigh the competitive harm reasonably to be expected from disclosure. See *Pennzoil Company* v. *Federal Power Commission*, 534 F.2d 627 (5th Cir. 1976) (*Pennzoil*).

[16] 5 U.S.C. 552(b)(4).

[17] See *National Parks & Conservation Association* v. *Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

[18] See *id.*; *Pennzoil*, *supra* note 16; *Critical Mass Energy Project* v. *NRC*, 931 F.2d 939 (D.C. Cir. 1991). Nevertheless, the Commission retains the right to release the information, notwithstanding competitive harm to submitters, as necessary to carry out the Commission's statutory responsibilities. In the event the Commission finds that disclosure would cause substantial competitive harm, but nevertheless would serve the public interest, the Commission will consider whether less restrictive options would be satisfactory For example, under such circumstances, the Commission could consider limiting the duration of claims of privilege for Form 580 responses such that such claims would expire after a given time period (*e.g.*, 3 months, 6 months, or one year from the date of filing) (see *supra* note 11).

[19] Comments alleging that the release of information claimed to be privileged would cause injury should address, at a minimum, the particular injury expected to be incurred as a result of disclosure and the basis for this contention. Any such comments should be narrowly drawn, with a specific description of that information which the commenter contends would cause actual competitive harm, if released. Moreover, comments alleging that the release of information claimed to be privileged would cause injury should also address whether limiting the duration of claims of privilege for Form 580 responses for a given time period (*e.g.*, 3 months, 6 months, or one year) would be adequate.

would be practicable or unduly burdensome.

We also invite those filing comments to advise us as to whether (and how) we might nevertheless be able to fully comply with our statutory responsibilities by adopting a different approach than the approach reflected in Form 580. Any alternative approach suggested should discuss how confidentiality concerns would be addressed.

Additionally, this NOPR invites all public utilities who previously provided responses to Form 580 interrogatories subject to a claim of privilege to present reasons why this information should not now be made publicly available.[20]

V. Written Comment Procedure

The Commission invites interested persons to submit written comments or other information concerning this proposed rulemaking and the issues identified above. All comments in response to this notice should be submitted to the Office of Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM94–5–000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before January 18, 1994.

All written submissions to this NOPR will be placed in the public file and will be available for public inspection in the Commission's Public Reference Room, 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act,[21] requires the Commission to describe the impact a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. As affected public utilities are already required to file responses to Form 580 interrogatories, the proposed rule would create no additional regulatory requirements. Additionally, the public utilities responding to the interrogatories are generally not small entities. Accordingly, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

[20] Such responses should individually address each request for privileged status previously submitted, *i.e.*, 1979–1981 filing, 1982–1983 filing, etc.

[21] 5 U.S.C. 601–612.

VII. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[22] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[23] The Commission has found that information gathering, analysis, and dissemination are not major federal actions that have a significant effect on the human environment.[24] Thus, no environmental assessment or environmental impact statement is required for this proposed rule.

VIII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations, at 5 CFR 1320.13, require OMB to approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this proposed rule are contained in Form 580, "General Interrogatory on Fuel and Energy Purchase Practices" (OMB Control No. 1902–0137).

The Commission uses the data collected in this information collection requirement to carry out its regulatory responsibilities pursuant to the Federal Power Act (FPA) as amended by, *inter alia*, PURPA. The Commission uses the data to evaluate fuel and purchase power procurement practices and resulting costs collected from customers through automatic adjustment clauses and in Commission proceedings under sections 205 and 206 of the FPA.

The proposed rule codifies an existing Commission requirement and imposes no additional information collection requirements. Therefore, the Commission is not submitting this rule to OMB for its approval but for informational purposes only.

List of Subjects

18 CFR Part 141

Electric power; Reporting and recordkeeping requirements.

18 CFR Part 388

Confidential business information; Freedom of information.

[22] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. Regs. Preambles 1986–90 ¶30,783 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[23] Id. (codified at 18 CFR 380.4).

[24] Id. (codified at 18 CFR 380.4(a)(5)).

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 141 and 388, chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

1. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

2. Part 141 is amended to add § 141.10, to read as follows:

§ 141.10 FERC Form No. 580, Interrogatories on Fuel and Purchase Power Practices.

(a) *Purpose.* The Commission is required by section 205(f)(2) of the Federal Power Act, 16 U.S.C. 824d(f)(2), to review, with respect to public utilities, practices under any automatic adjustment clauses of such utilities to insure the efficient use of resources (including economical purchases and use of fuel and electric energy) under such clauses.

(b) *Requirement to file.* Each public utility with a steam-electric generating station of 50 megawatts or greater must complete and file, by both hard copy and electronic filing, responses to interrogatories, designated herein as FERC Form No. 580, with the Commission in the time and manner prescribed in the instructions accompanying the interrogatories.

(c) *Requests for confidential treatment.* Notwithstanding the provisions of § 388.112 of this chapter, responses to the interrogatories designated herein as FERC Form No. 580 are not entitled to privileged treatment under § 388.112 of this chapter.

PART 388 INFORMATION AND REQUESTS

3. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551–557; 42 U.S.C. 7101–7352.

4. In § 388.112, paragraph (a) is revised to read as follows:

§ 388.112 Requests for privileged treatment of documents submitted to the Commission.

(a) *Scope.* Any person submitting a document to the Commission may request privileged treatment by claiming that some or all of the information contained in a particular document is

exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, and should be withheld from public disclosure. However, a response to a FERC Form No. 580 interrogatory is not entitled to privileged treatment under § 388.112.

* * * * *

[FR Doc. 93–29416 Filed 11–30–93; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 705, 706, 715, 716, 785, 825 and 870

RIN 1029–AB75

Definitions of "Anthracite," "Bituminous/Subbituminous," "Coal," and "Lignite"

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; extension of public comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) extends until January 7, 1994, the public comment period on the proposed rule published in the October 7, 1993, **Federal Register** (58 FR 52374). This will provide more time in which to comment on the proposed rule.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on January 7, 1994.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol St., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Douglas J. Growitz, P.G., Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, room 640, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1507.

SUPPLEMENTARY INFORMATION: On October 7, 1993, OSM published a proposed rule (58 FR 52374), which would revise the existing definitions of "anthracite" and "coal"; add definitions of "bituminous/subbituminous" and "lignite"; and remove the existing definitions of "anthracite, bituminous and subbituminous coal" and "lignite coal." OSM proposes to change the existing definition of "coal" and its related terms by deleting references to the coal classifications of ASTM Standard D 388–77. These revisions will avoid prior periodic calls to update the existing definitions to reflect the most current ASTM Standard D 388.

The comment period for the proposed rule was scheduled to close on December 6, 1993. However, an extension was requested in order to provide more time in which to comment on the proposed rule. Therefore, OSM is extending the comment period. Comments will now be accepted until 5 p.m. local time on January 7, 1994.

Dated: November 24, 1993.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 93–29368 Filed 11–30–93; 8:45 am]
BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME–8–1–5854; A–1–FRL–4799–9]

Approval and Promulgation of Air Quality Implementation Plans; Maine; VOC RACT Catch-ups

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the Maine State Implementation Plan (SIP) submitted by the Maine Department of Environmental Protection (DEP) on January 13, 1993. This SIP revision contains regulations which require the implementation of reasonably available control technology (RACT) for various types of volatile organic compound (VOC) sources. The EPA has evaluated this SIP revision and is proposing its approval under the Clean Air Act, as amended in 1990.

DATES: Comments must be received on or before January 3, 1994.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environ- mental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On January 13, 1993, EPA received a formal SIP submittal from the Maine DEP containing the following regulations:

Chapter 100: Definitions Regulation (amended).

Chapter 129: Surface Coating Facilities.

Chapter 130: Solvent Degreasers.

Chapter 131: Cutback and Emulsified Asphalt.

Chapter 132: Graphic Arts-Rotogravure and Flexography.

In addition, on March 26, 1993, DEP submitted additional documentation regarding the effective date of these regulations. These regulations were adopted (or amended) pursuant to the requirements of sections 182(b)(2) and 184(b)(1)(B) of the Clean Air Act (CAA).

Background

Under the pre-amended Clean Air Act, ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of control technique guidelines (CTGs) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were: (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

Under the pre-amended Clean Air Act, Maine was designated as rural nonattainment and, therefore, was required to adopt regulations pursuant to the Group I and Group II CTGs for major sources. Based on monitored

ozone exceedances in Maine, EPA notified the Governor of Maine on May 25, 1988 and November 8, 1988 that portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that pre-enactment ozone nonattainment areas that retained their designation of nonattainment and were classified as marginal or above fix their deficient RACT rules for ozone by May 15, 1991. Pursuant to the amended CAA, two counties in Maine were classified as marginal (these two counties constitute one marginal ozone nonattainment area) and seven counties in Maine were classified as moderate (these seven counties constitute three moderate ozone nonattainment areas). 56 FR 56694 (November 6, 1991). The State submitted revisions to meet the RACT fix-up requirement and EPA approved these revisions to the Maine SIP on February 3, 1992 and March 22, 1993 (57 FR 3946 and 58 FR 15281).

Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the CAAA of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources. This RACT requirement applies to nonattainment areas that previously were exempt from certain RACT requirements to "catch up" to those nonattainment areas that became subject to those requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas. As previously mentioned, the State of Maine contains three moderate ozone nonattainment areas. These areas are thus subject to the section 182(b)(2) RACT catch-up requirement.

Also, the State of Maine is located in the Northeast Ozone Transport Region (OTR). The entire State is, therefore, subject to section 184(b) of the amended CAA. Section 184(b) requires that RACT be implemented for all VOC sources covered by a CTG issued before or after the enactment of the CAAA of 1990 and for all major VOC sources (defined as 50 tons per year for sources in the OTR).

Since Maine had previously submitted regulations for bulk gasoline terminals, fixed roof petroleum tanks, and paper coating sources pursuant to the RACT fix-up requirement, in order to meet the RACT catch-up requirement, the State must, therefore, adopt regulations (or affirm that no sources exist) for the remaining 26 CTG categories as well as adopt rules for all major non-CTG sources. (Rules for non-CTG sources are not part of this SIP revision and will not be further discussed in this notice).

EPA's Evaluation of Maine's Submittal

In response to the RACT catch-up requirement, on May 14, 1992 and June 12, 1992, Maine submitted negative declarations for the CTG categories listed as follows:

1. Surface coating of coils;
2. Surface coating of magnet wire;
3. Surface coating of large appliances;
4. Surface coating of automobiles and light duty trucks;
5. Manufacturing of synthesized pharmaceuticals;
6. Manufacturing of pneumatic rubber tires;
7. Manufacturing of vegetable oil;
8. Air oxidation processes in synthetic organic chemical manufacturing industry;
9. Manufacturing of high density polyethylene, polypropylene and polystyrene resins;
10. Leaks from synthetic organic chemical and polymer manufacturing;
11. Petroleum liquid storage in external floating roof tanks;
12. Equipment leaks from natural gas/gasoline processing plants;
13. Petroleum refinery processes;
14. Leaks from petroleum refinery equipment; and
15. Large petroleum dry cleaners.

Through the negative declaration, the State of Maine is asserting that there are no sources within the State that would be subject to a rule for that source category. EPA is proposing to approve this negative declaration submittal as meeting the sections 182(b)(2) and 184(b) RACT requirements for the source categories listed. However, if evidence is submitted during the comment period that there are existing sources within the State of Maine that, for purposes of meeting the RACT requirements, would be subject to one or more of these rules, if developed, EPA would be unable to take final approval action on the negative declarations.

After submitting the above negative declarations, Maine then proceeded with the process of adopting regulations to control the remaining CTG categories which include surface coating processes, solvent metal cleaning, graphic arts operations, the use of cutback asphalt, and gasoline marketing operations. Maine's gasoline marketing RACT catch-up regulations are not a part of this SIP revision, and will not be further discussed in this action.

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in section 110 and part D of the Act and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guidelines (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for RACT for specific source categories. EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in those portions of the proposed Post–1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987) and "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988) and the existing CTGs. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The VOC regulations that are included in Maine's January 13, 1993 SIP submittal are briefly summarized as follows:

Chapter 100: Definitions Regulation

This regulation was amended to include the following 19 newly adopted definitions: as applied, capture system, carbon adsorber, condensate, condenser, continuous emission monitor, control system, double block-and-bleed system, exempt VOC compounds, gaseous excess emissions, leak, maximum true vapor pressure, open-ended valve or line, organic compound, overall VOC emission reduction efficiency, pressure release, solvent, standard atmospheric conditions, and VOC incinerator.

Chapter 129: Surface Coating Facilities

This regulation contains requirements for limiting the VOC emissions from the surface coating of cans, fabric, vinyl, metal furniture, flatwood paneling, and miscellaneous metal parts and products. Surface coating facilities may comply with this regulation though the use of low VOC coatings, daily-weighted averaging, and/or add-on control equipment.

Chapter 130: Solvent Degreasers

This regulation contains equipment and operation standards for solvent degreasing operations. These requirements apply to cold cleaners, open-top vapor degreasers and conveyorized degreasers.

Chapter 131: Cutback and Emulsified Asphalt

This regulation contains prohibitions regarding the mixing, storage, use, and application of cutback and emulsified asphalts.

Chapter 132: Graphic Arts-Rotogravure and Flexography

This regulation contains requirements to limit the emissions from rotogravure and flexographic printing operations. Graphic arts facilities may comply with these requirements through the use of low VOC coatings, daily-weighted averaging, and/or add-on control equipment.

EPA has evaluated Maine's VOC regulations and has found that they are consistent with EPA model regulations and the following CTG documents: "Control of Volatile Organic Compound Emissions from Existing Stationary Sources–Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light Duty Trucks" (EPA–450/2–77–008); "Volume III: Surface Coating of Metal Furniture" (EPA–450/2–77–032); "Volume VI: Surface Coating of Miscellaneous Metal Parts and Products" (EPA–450/2–78–015); "Volume VII: Factory Surface Coating of Flat Wood Paneling" (EPA–450/2–78–032); "Volume VIII: Graphic Arts-Rotogravure and Flexography" (EPA–450/2–78–033); "Control of Volatile Organic Compounds from Use of Cutback Asphalt" (EPA–450/2–77–037); and "Control of Volatile Organic Compound Emissions from Solvent Metal Cleaning" (EPA–450/2–77–022). As such, EPA believes that the submitted rules constitute RACT for the applicable sources.

Maine's VOC regulations and EPA's evaluation are detailed in a memorandum, dated July 16, 1993, entitled "Technical Support Document–Maine–VOC RACT Catch-ups." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this action.

EPA is proposing to approve this revision to the Maine SIP and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the ADDRESSES section of this action.

Proposed Action

EPA is proposing to approve Maine's Chapter 100 "Definitions Regulation," Chapter 129 "Surface Coating Facilities," Chapter 130 "Solvent Degreasers," Chapter 131 "Cutback and Emulsified Asphalt," and Chapter 132 "Graphic Arts-Rotogravure and Flexography" as meeting the requirements of sections 182(b)(2) and 184(b) of the CAA for the following categories of VOC sources: the surface coating of cans, fabric, vinyl, metal furniture, flatwood paneling, and miscellaneous metal parts and products; solvent metal cleaning; the use of cutback asphalt; and rotogravure and flexographic printing operations.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approverequirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 28, 1993.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 93–29411 Filed 11–30–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–293, RM–8336]

Radio Broadcasting Services; Harrisburg, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Harrisburg Broadcasting, requesting the allotment of FM Channel 240C3 to Harrisburg, Arkansas, as that community's first local aural transmission service. Coordinates used for this proposal are 35–31–23 and 90–39–42.

DATES: Comments must be filed on or before January 18, 1994, and reply

comments on or before February 2, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Riley M. Murphy, Esq., 1100 Poydras Street, suite 2590, New Orleans, LA 70163–2590.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–293, adopted November 3, 1993, and released November 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29392 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–286, RM–8377]

Radio Broadcasting Services; Jeffersontown, Richmond and Shelbyville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed jointly by Channel Chek, Inc., licensee of Station WSLY(FM), Channel 269A, Jeffersontown, Kentucky, WCBR Radio, Inc., licensee of Station WMCQ(FM), Channel 269A, Richmond, Kentucky, and Shelby County Broadcasting, Inc., licensee of Station WTHQ(FM), Channel 267A, Shelbyville, Kentucky. The petition requests the substitution of Channel 268C3 for Channel 269A at Richmond, the substitution of Channel 267A for Channel 269A at Jeffersontown, and the substitution of Channel 269A for Channel 267A at Shelbyville pursuant to § 1.420(g)(3) of the Commission's Rules. The coordinates for Channel 268C3 at Richmond's authorized site are North Latitude 37–44–09 West Longitude 84–16–05. The coordinates for Channel 267A at Jeffersontown are North Latitude 38–13–41 and West Longitude 85–30–30. The coordinates for Channel 269A at Shelbyville are North Latitude 38–12–48 and West Longitude 85–09–13.

DATES: Comments must be filed on or before January 18, 1994, and reply comments on or before February 2, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry F. Cole, Bechtel & Cole, Chartered, 1901 L Street, NW., suite 250, Washington, DC 20036 (Counsel for Joint Petitioners).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–286, adopted October 29, 1993, and released November 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as the one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29398 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–274, RM–8372]

Radio Broadcasting Services; Ely, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica seeking the allotment of Channel 243A to Ely, Nevada, as the community's second local FM transmission service. Channel 243A can be allotted to Ely in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 39–14–51 and West Longitude 114–53–16.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 501 Aultman, Ely, Nevada 89301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–274, adopted October 20, 1993, and released November 3, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–

3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29391 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–275, RM–8373]

Radio Broadcasting Services; Pioche, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica seeking the allotment of Channel 255A to Pioche, Nevada, as the community's first local aural transmission service. Channel 255A can be allotted to Pioche in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 37–55–47 and West Longitude 114–27–05.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 501 Aultman, Ely, Nevada 89301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–275, adopted October 20, 1993, and released November 3, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The Complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29390 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–284, RM–8375]

Radio Broadcasting Services; Woodville, MS and Clayton, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by PDB Broadcasting proposing the substitution of Channel 299C3 for Channel 299A at Woodville, Mississippi, and modification of the construction permit for Channel 299A to specify operation on the higher class channel. The coordinates for Channel 299C3 are 31–13–43 and 91–07–22. To accommodate the upgrade at Woodville, we shall also propose to delete vacant Channel 300A at Clayton, Louisiana, at coordinates 31–44–42 and 91–32–54. We shall propose to modify the construction permit for Channel 299A in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Donald B. Brady, President, PDB Broadcasting, 191 Tyere, Jackson, Mississippi 39202.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–284, adopted October 29, 1993, and released November 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29388 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–276, RM–8353]

Radio Broadcasting Services; Franklinton, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by GACO Broadcasting Corporation, proposing the allotment of Channel 255A to Franklinton, Louisiana, as the community's first local FM service. Channel 255A can be allotted to Franklinton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 255A are 30–50–54 and 90–09–18.

DATES: Comments must filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Julian P. Freret, Esq., Booth, Freret & Imlay, suite 204, 1233 20th Street, NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–276, adopted October 19, 1993, and released November 3, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29389 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88–21; Notice 07]

RIN 2127–AE62

Federal Motor Vehicle Safety Standards; Bus Emergency Exits and Window Retention and Release

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking, response to petition for reconsideration.

SUMMARY: In response to two petitions from the Blue Bird Body Company, the agency is proposing to amend the performance requirements for emergency exit windows to allow manufacturers to install windows other than push-out windows in order to meet emergency exit requirements. In addition, this proposal would allow manufacturers to install either two sliding emergency exit windows or an emergency exit door as the first means of satisfying the recently-issued requirements for additional emergency exits on school buses. The agency believes that this proposal would allow and encourage the installation of alternative window designs while maintaining the level of safety afforded by those new requirements. Finally, the agency is proposing two alternate means for determining the maximum amount of area that will be credited for all types of emergency exits on school buses.

DATES: Comments must be received by January 31, 1993. If adopted, the proposed amendments would become effective 18 months after the date of publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Charles R. Hott, NRM–15, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–0247.

SUPPLEMENTARY INFORMATION:

Background

When Standard No. 217, Bus Window Retention and Release, originally became effective on September 1, 1973, it required that buses other than school buses have exits whose combined area, in square centimeters, equaled or exceed 432 times the number of designated seating positions.

(Note: At the time, the standard was stated in terms of square inches. However, pursuant to E.O. 12770, Metric Usage in Federal Government Programs (56 FR 35801; July 29, 1991), the agency is in the process of converting all safety standards to metric units. To avoid confusion, all units of measurement are stated in terms of metric equivalents in this notice.)

The type of exits to be installed to comply with the 1973 requirement for non-school buses was left to the choice of the manufacturers, although the agency assumed that most manufacturers would meet the standard primarily by installing push-out side windows.

School buses were excluded from the 1973 requirement for the following reason:

In view of discipline problems associated with mandatory quick-release and exit devices throughout a school bus which may interfere with the school bus driver's task, and the added risk of children falling from moving school buses, push-out windows for school buses would remain optional (35 FR 13025; August 15, 1970).

The 1973 Standard applied only to non-school buses and did not require that push-out windows be used as the only means of compliance. However, as noted above, it was expected that those windows would be the primary means of compliance. Further, the Standard required that when a school bus was voluntarily equipped with push-out windows or with other emergency exits, those exits must conform to the same requirements specified in the Standard for exits in buses other than school buses.

In response to the Motor Vehicle and Schoolbus Safety Amendments of 1974 (Pub. L. 93–492), Standard No. 217 was amended to require emergency exits in school buses. The agency did not follow the example of its requirements for non-school buses and simply specify that

school bus manufacturers provide exits whose total combined area equalled a specified number of square centimeters based on the number of designated seating positions, leaving the choice of exit type to the manufacturer. Instead, the agency required that all new school buses have either (1) one rear emergency door, or (2) "one emergency door on the vehicle's left side that is in the rear half of the bus passenger compartment and is hinged on its forward side, and one push-out rear window." Like all of the agency's safety standards for motor vehicles, Standard No. 217 is a minimum safety standard. Its requirements specify the fewest permissible number of emergency exits for a school bus.

In response to several school bus crashes in the late 1980's, and recommendations by the National Transportation Safety Board, the agency initiated rulemaking to require more emergency exit area on school buses. On March 15, 1991, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend Standard No. 217 to require that the minimum number of emergency exits on school buses be based upon the seating capacity of the school bus so that emergency exit capability would be proportional to the maximum occupant capacity of the school bus and the school bus emergency exits requirements would be comparable to the requirements for non-school buses (56 FR 11153). The NPRM proposed two options regarding the means for providing the additional emergency exit area required by the proposed formula. Option A would have required the use of emergency exit doors. Option B would have required a combination of emergency exit doors and emergency roof exits.

In the NPRM, the agency stated that it was not proposing to extend certain existing non-school bus requirements to school buses because those requirements had the effect of promoting the use of push-out windows. Specifically, the agency did not propose to require that the required emergency exists for a school bus be distributed so that at least 40 percent of it was on each side of the bus. The agency also did not propose to limit the amount of area that would be credited to any particular exit to 3,458 square centimeters. The agency tentatively concluded that these requirements should not be extended to school buses because the agency continued to believe that push-out windows were not appropriate emergency exits for school buses. The agency gave three reasons for its concern about push-out windows:

1. Push-out windows are of limited usefulness in evacuating school buses since those windows are usually higher off the ground and smaller in size than exit doors, and thus are difficult for school age occupants to use.

2. Push-out windows are almost never used as a means of escape during school evacuation drills, increasing the likelihood, particularly for smaller children, that the windows will not be used in an actual emergency.

3. Push-out windows are likely targets for tampering.

On November 2, 1992, NHTSA published a final rule increasing the amount of emergency exit area on school buses (57 FR 49413). As in the proposal, the final rule required that the minimum emergency exit area on school buses be based upon the seating capacity of the school bus.

However, the final rule differed from the NPRM concerning the means by which the additional emergency exit area will be provided. The final rule specifies that the first additional exit must be a side door and the second additional exit must be a roof exit. If adding those exits does not satisfy the requirements for additional exit area, then the final rule allows manufacturers to choose between side door exits, roof exits, and windows in providing the remaining additional exit area. This change regarding the required types of emergency exits resulted from the agency's tempering its position regarding push-out windows in response to the large number of comments favoring push-out windows. In particular, commenters refuted the agency's third reason for not allowing push-out windows by stating that experience indicates that they are not more likely than other exits to be the subject of tampering.

Blue Bird's Petitions

On February 25, 1992, the Blue Bird Body Company (Blue Bird) petitioned the agency to amend Standard No. 217 to allow the installation of sliding exit windows, and to allow exit windows, as alternatives to doors or a combination of doors and roof exits, for meeting the additional exit requirements proposed in the March 1991 NPRM. The latter request was partially mooted by the November 1992 final rule. This petition will be referred to as Petition 1 in this notice.

On December 3, 1992, Blue Bird petitioned for reconsideration of the November 2, 1992 final rule "on the grounds that it fails to accomplish the stated objective of making school bus emergency exit requirements equivalent to existing non-school bus emergency exit requirements." Specifically, Blue Bird stated that the final rule differed from the non-school bus requirements in allowing the area of a front service door to be credited towards the emergency exit requirements, in allowing the total daylight opening of an exit to be credited, and in not requiring a distribution of exits on each side of the bus. This petition will be referred to as Petition 2 in this notice.

Note: For the remainder of this notice, all references to Standard No. 217 are referring to that standard as it will read after the amendments made by the November 2, 1992 final rule become effective, and after the changes proposed in an NPRM published the same day (57 FR 49444) become effective, assuming that they are adopted as proposed.)

Exit Window Performance Requirements

The performance requirements for emergency exit windows in Standard No. 217 effectively require those windows be of the push-out type. These windows are defined as being "designed to open outward to provide for emergency egress." For example, Standard No. 217 requires that at least one force application to operate the release mechanism for an emergency exit window (school bus or non-school bus) must differ by 90° to 180° from the "initial push-out motion" of the exit. The reason that the Standard has the effect of requiring that an emergency exit window be a push-out window is that when the performance requirements for emergency exit windows were first developed, the only existing type of emergency exit window were push-out windows. Thus, the requirements were tailored to push-out windows.

The agency believes that sliding windows, as described in Petition 1, can offer safety benefits equivalent to those of push-out windows. Sliding windows provide comparable exit area to push-out windows and are located in the same position as push-out windows. Because Standard No. 217 includes requirements for release mechanisms, the agency believes that sliding windows would not be any more difficult to operate than push-out windows. Further, as Blue Bird notes in Petition 1, sliding windows offer benefits over push-out windows in some situations. For example, in the 1989 Alton, Texas school bus crash, twenty-one students drowned when the vehicle rolled into a water-filled gravel pit. Even if available, push-out windows could not have been opened until the bus was almost filled with water due to pressure from the water outside the buses. However, sliding windows could have

been immediately opened under those conditions.

Therefore, the agency is proposing to amend the performance requirements for emergency exit windows so that push-out motion is not required. The agency is also proposing to clarify the language concerning the type and number of release mechanisms and force applications for each window. The agency tentatively concludes that the standard should provide manufacturers with a choice between equipping a window with a single mechanism (with two force applications to release) or with two mechanisms (with one force application each to release). The agency believes that requiring a passenger to perform more than two motions before a window can be opened would be needlessly complicated, and could slow evacuation of a bus in an emergency. The agency is not proposing to rescind the requirement that at least one force application to operate the release mechanism(s) differ by 90° to 180° from the motion necessary to open the emergency exit window. If this requirement were not retained, the agency believes that accidental openings could occur because the same motion to operate the release mechanism would open the exit.

Finally, the agency is proposing to delete references to push-out windows in a variety of requirements to clarify that each of the amended requirements applies either to any type of emergency exit or to any type of emergency exit window (e.g., the identification requirements).

School Bus Emergency Exit Requirements

Standard No. 217 requires school buses to have either a rear emergency exit door or a rear push-out window and a left side emergency exit door. In addition, as noted above, they may be required, depending on the seating capacity of the school bus, to have additional emergency exits added in the following order of priority until the emergency exit area requirements are met: (1) A side emergency exit door, (2) an emergency roof exit, and (3) a side emergency exit door, an emergency roof exit, or an emergency exit window. Including emergency exit windows as an option in the third priority category was the result of a compromise between the agency's belief that push-out windows were less likely to be used in an emergency, and the large number of comments favorable to push-out windows.

In evaluating Petition 1, the agency examined whether emergency exit windows should be included in the first priority category of exits for complying with the additional emergency exit requirements.

To answer this question, the agency identified three types of situations in which the evacuation of a school bus may be necessary:

1. Minor crashes or mechanical failures. These may result in all school bus passengers leaving the bus. Since evacuation time is not a major concern, all passengers would likely exit from the front service door.

2. Major crashes. It is likely to be important that all school bus passengers leave the bus. Evacuation is important, but conditions indicate that it can be done in an orderly fashion. All of the passengers would exit from either the front service door or the rear/side emergency exit door.

3. Catastrophic crashes (e.g., fires or submersions). All school bus passengers must evacuate the bus as quickly as possible. Evacuation time is the major concern.

The agency believes that the existing provisions in Standard No. 217 provide sufficient emergency exits for the first two types of situations. The rationale underlying the November 2, 1992 final rule was to provide additional exits for the third type of situation. In a catastrophic crash, passengers leave the bus through any opening that is available. Increasing the number of exits will decrease evacuation time in this situation. Therefore, allowing emergency exit windows could decrease evacuation time in catastrophic crashes.

In addition to examining whether emergency exit windows offer benefits over other types of exits, the agency has reexamined its remaining concerns about push-out windows, i.e., that students tend not to use them and that evacuation drills rarely include them. The agency believes that while small children would still be reluctant to use an emergency exit window in the first two situations above, a child would use any available exit in a catastrophic crash. Finally, the agency believes that a school could, and would, develop training programs for emergency exit windows if its school buses were equipped with emergency exit windows.

Therefore, the agency is proposing to include sliding exit windows as an alternative to doors in the first priority category of additional emergency exits. The agency is not proposing to include push-out exit windows in the first priority category as the agency believes that there are several differences between these two types of emergency exit windows that make a push-out window less desirable on a school bus. The agency requests comments on whether it is preferable to install more than 2 sliding exit windows as the first priority prior to installing a roof hatch.

First, in some evacuation situations, a push-out window would be difficult, if not impossible, for a small child to open. In the Alton, Texas crash, push-out windows could not have been opened until the bus was almost filled with water due to pressure from the water outside the buses. If a bus came to rest on one side after a crash, the windows on the upper side would have to be pushed upward against gravity. In both of these situations, sliding windows would be easier to open. Even if the bus were upright, push-out windows would have to be held open to permit passage through them. Sliding windows will remain open without being held.

Second, push-out windows typically require a person to exit through the window head first. Push-out windows are typically hinged at the top. To exit through a window of this type, a person must hold the window open with their hands and go through the opening head first. Given the height above the ground of the window, this would increase the reluctance of small children to use the exit. Sliding exit windows slide or drop out of the way and remain open, allowing an occupant to exit feet first in most situations.

The agency is also proposing that if a manufacturer chooses to install emergency exit windows, it cannot install both sliding and push-out windows, except in one circumstance. The reason for this proposal is that the agency believes that the presence of different types of emergency exit windows in the same bus would lead to confusion for children trying to determine how to open a particular window. The single limited circumstance in which both sliding and push-out windows would be permissible would be in a bus with a single rear push-out window and side sliding windows. These buses would be excluded because they are typically rear engine buses. A sliding window could not be installed in the rear of such buses.

Exit Area Credit

In Petition 2, Blue Bird objected to the November 2, 1992 final rule because it differed from the non-school bus requirements in allowing the area of a front service door to be credited towards the emergency exit requirements. NHTSA notes that none of the commenters on the NPRM objected to the proposal to allow the area of all existing exits on school buses to be

subtracted from the calculated amount of required exit area before determining the number of additional exits that would be required. Accordingly, the November 2 final rule allowed the area of the front service door to be credited toward the emergency exit requirements. The agency notes further that the November 2 final rule was intended to require additional exits on some large school buses. Therefore, the agency believes that all existing exits should be subtracted before determining if additional exits will be required. The agency also notes that the front service door of a non-school bus can be counted as an emergency exit if it complies with the performance requirements in Standard No. 217. Therefore, the agency is not amending Standard No. 217 as Blue Bird requests.

In Petition 2, Blue Bird also objected to the November 2 final rule because it allows the total daylight opening of an exit to be credited. Based upon information provided by Blue Bird, it appears that the agency underestimated the size of current exits on school buses. Therefore, the agency overestimated the number of exits that would be required by the November 2 final rule. In addition, the agency is concerned that manufacturers have the option of increasing the size of exits, instead of increasing the number of available exits. As stated earlier, the agency believes that increasing the number of exits will decrease evacuation time in a catastrophic crash. Restricting the amount of area that can be credited for an exit would ensure that this rulemaking would achieve its intended purpose of increasing the number of exits available to school bus occupants in a catastrophic crash.

Therefore, the agency is proposing two alternative means to limit the amount of area that can be credited for any type of school bus emergency exit.

Option one would limit the amount of area that can be credited for any type of school bus emergency exit to 3,458 square centimeters. This figure is equivalent to the current amount that can be credited for a non-school bus exit. The proposed regulatory text in this notice reflects this option.

Option two would limit the amount of area that can be credited for any type of school bus emergency exit to an area nearly equal to the area used for the calculations in the Final Regulatory Evaluation and the March 15, 1991 NPRM. This option would be consistent with the final rule, and would limit the amount of area that can be credited for any exit. This would eliminate the ability of manufacturers to comply with the requirements of the November 2, 1992 final rule by increasing the size of exits rather than increasing the number of exits. Thus, for use in the formulas to determine if additional emergency exits must be provided (S5.2.3.1), the amount of area that can be credited for each type of exit would be as follows:

- Front Service Door: Daylight opening (DLO) or 12,916 square centimeters, whichever is less.
- Rear or Side Exit Door: 6,954 square centimeters.
- Rear Push-out Window: 5,002 square centimeters.
- Roof Exit: DLO or 3,458 square centimeters, whichever is less.
- Side Exit Window: DLO or 3,458 square centimeters, whichever is less.

In the case of rear or side exit doors and rear push-out windows, the maximum credit is equal to the minimum size required to comply with the requirements of Standard No. 217. The agency does not have a preference between these two options, though the proposed regulatory text uses option one for the ease of the reader.

The agency seeks comment on which option is preferable. Option one would increase the number of exits in comparison to the November 2, 1992 final rule, and would make the number of emergency exits on school buses, based on seating capacity, closer to the number of emergency exits on non-school buses. The agency notes, however, that school buses have a greater seating capacity than non-school buses of the same physical size. The agency requests comments on the number of exits required on the same bus if it is equipped with seats either as a school bus or as a non-school bus.

In addition to limiting the amount of area that can be credited for each emergency exit, the agency is considering amending S5.2.3 to present the school bus emergency exit requirements in the form of a table. The exits required by the table would be determined using the existing formula and, if the proposal to limit the amount of credit were adopted, whichever credit limits were adopted. As an example, the following tables would be substituted for S5.2.3 if option two were adopted and if the agency did not allow sliding windows as an option instead of a door. The following table would apply to school buses with a rear emergency exit door.

Seating capacity	Additional exits
Less than 46 ...	None.
46–62	1 side door.
63–70	1 side door and 1 roof exit.
More than 70 ...	1 side door and 1 roof exit and 1 of the following options: 1 side door or 1 roof exit or 2 windows.

The following table would apply to school buses with a side emergency exit door and a rear emergency push-out window:

Seating capacity	Additional exits
Less than 58 ...	None.
58–74	1 side door.
75–82	1 side door and 1 roof exit.
More than 82 ...	1 side door and 1 roof exit, and 1 of the following options: 1 side door or 2 windows or 1 roof exit.

The tables were based on the largest capacity bus NHTSA believes is built for each type. NHTSA requests comment on whether larger capacity buses, which would require more exits under the current requirements than shown in the tables, are being built.

Exit Distribution

In Petition 2, Blue Bird objected to the November 2 final rule because it does not require at least 40 percent of the emergency exits to be on each side of the bus, as is required for non-school buses. While the November 2 final rule does not include such a requirement for school buses, it does have distribution requirements. Additional emergency exit doors are required to be added on alternate sides of the bus. A school bus equipped with emergency exit windows is required to have an even number of emergency exit windows evenly divided between the right and left sides of the bus. Therefore, NHTSA is not proposing to apply the 40 percent distribution requirement to school buses as Blue Bird requests.

Miscellaneous

In drafting the NPRM, the agency noted that it had not included a minimum size requirement for emergency exit windows installed to satisfy the requirements for school buses. Section S5.4.1 specifies that any exit not required by S5.2.3 must provide an opening large enough to permit passage of "an ellipse having a major axis of 20 inches and a minor axis of 13 inches." This section applies to exit windows in non-school buses and to voluntarily installed windows in school buses. However, it does not apply to windows installed to comply with the

school bus requirements (S5.2.3). Therefore, the agency is proposing to amend S5.4.2 to specify that school bus exit windows must satisfy the same requirement.

In the November 2 final rule all units of measurement were stated in terms of metric units pursuant to E.O. 12770, Metric Usage in Federal Government Programs (56 FR 35801; July 29, 1991). However, the agency has since decided to seek comment on how to convert gross vehicle weight rating (GVWR) for all safety standards. Therefore, the agency is proposing to return GVWR references in Standard No. 217 to pounds until a final decision is made.

The November 2, 1992 final rule requires emergency exist doors to be equipped with a positive door opening device that keeps the door from closing past the point where the door is perpendicular to the bus (S5.4.2.1(a)(3)(i)). The agency seeks comment on whether this type of device should also be required for emergency exist windows, so that children can exist from the window, regardless of the bus' orientation, without having to hold the window open themselves.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined to be not "significant" under either. NHTSA estimates that the consumer cost of option one ranges from $26 to $38 million and the consumer cost of option two ranges from $14 to $20 million, depending on whether a pair of sliding windows is substituted for a side emergency door. The lower costs in these ranges are associated with sliding windows. NHTSA estimated the consumer cost of the November 2, 1992 final rule to be approximately $22 million. Therefore, option one would cost the consumer $4 to $16 million more than previously estimated and option two would cost the consumer $2 to $8 million less than previously estimated. NHTSA has prepared an addendum to the Final Regulatory Evaluation for the November 2 final rule which is available in the docket for this rulemaking.

Regulatory Flexibility Act.

NHTSA has also considered the impacts of this proposed rulemaking action under the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA does not anticipate any significant economic impact as a result of this proposal.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposal.

National Environmental Policy Act

NHTSA has also analyzed this rulemaking action for the purpose of the National Environmental Policy Act. The agency has determined that implementation of this proposal would not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposal does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly, confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 of title 49 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

§ 571.217 [Amended]

2. Section 571.217 would be amended by removing the definition of "daylight opening" in S4; adding a new definition of "sliding window" to S4 in alphabetical order; and by revising S1; the introductory paragraph to S5.2.3.1, S5.2.3.1(a)(1), S5.2.3.1(a)(2)(i),

S5.2.3.1(b)(1), and S5.2.3.1(b)(2)(i); S5.2.3.2(a)(2), S5.2.3.2(a)(3), and S5.2.3.2(c); S5.3.1; the introductory paragraph to S5.3.2; the introductory paragraph to S5.3.3.1 and S5.3.3.1(b); the introductory paragraph to S5.3.3.2; the introductory paragraph to S5.3.3.3; S5.4, S5.4.1, and S5.4.2; the heading to S5.4.2.1; by adding S5.4.2.1(c); by revising the heading of S5.4.2.2; and the introductory paragraph to S5.5.1 to read as follows:

§ 571.217 Standard No. 217; Bus Emergency Exits and Window Retention and Release.

S1. *Scope.* This standard establishes requirements for the retention of windows other than windshields in buses, and establishes operating forces, opening dimensions, and markings for bus emergency exits.

* * * * *

S4. *Definitions.*

* * * * *

Sliding window means a vehicle window designed to open by moving either vertically or horizontally to provide for emergency egress.

* * * * *

S5.2.3.1 Each bus shall be equipped with the exits specified in either S5.2.3.1(a) or S5.2.3.1(b), chosen at the option of the manufacturers. The area in square centimeters of the unobstructed openings for emergency exit shall collectively amount to at least 432 times the number of designated seating positions in the bus. The maximum amount of emergency exit area credited to an emergency exit shall be 3,458 square centimeters.

(a)(1) One rear emergency door that opens outward and is hinged on the right side (either side in the case of a bus with a GVWR of 10,000 pounds or less), and exits providing an additional emergency exit area (AEEA) calculated in accordance with the following formula:

AEEA = [TA–FSDA–RDEA]
Where
TA (total area) = 432 × number of designated seating positions;
FSDA (front service door area) = Area of the unobstructed opening of the front service door or 3,458 square centimeters, whichever is less; and
RDEA (rear door exit area) = Area of the unobstructed opening of the rear door or 3,458 square centimeters, whichever is less.

(2) * * *

(i) A left side emergency exit door that meets the requirements of S5.2.3.2(a); or two sliding windows that meet the requirements of S5.2.3.2(c);

* * * * *

(b)(1) One emergency door on the vehicle's left side that is hinged on its forward side and meets the requirements of S5.2.3.2(a), and a push-our rear window that provides a minimum opening clearance 41 centimeters high and 122 centimeters wide and meets the requirements of S5.2.3.2(c), and exits providing an additional emergency exit area (AEEA) calculated in accordance with the following formula:

AEEA = [TA–FSDA–SDEA–POWA]
Where
TA (total area) = 432 × number of designated seating positions;
FSDA (front service door area) = Area of the unobstructed opening of the front service door or 3,458 square centimeters, whichever is less;
SDEA (side door exit area) = Area of the unobstructed opening of the side door or 3,458 square centimeters, whichever is less; and
POWA (push-out window area) = Area of the unobstructed opening of the rear push-out window or 3,458 square centimeters, whichever is less.

(2) * * *

(i) A right side emergency door that meets the requirements of S5.2.3.2(a); or two sliding windows that meet the requirements of S5.2.3.2(c);

* * * * *

S5.2.3.2 * * *

(a) * * *

(2) The first side emergency exit door installed pursuant to S5.2.3.1(a)(2) shall be located on the left side of the bus and as near as practicable to the midpoint of the passenger compartment. A second side emergency exit door installed pursuant to S5.2.3.1(a)(2) shall be located on the right side of the bus. In the case of a bus equipped with three side emergency door exits pursuant to S5.2.3.1(a)(2), the third shall be located on the left side of the bus.

(3) The first side emergency exit door installed pursuant to S5.2.3.1(b)(2) shall be located on the right side of the bus. A second side emergency door exits pursuant to S5.2.3.1(b)(2) shall be located on the left side of the bus. In the case of a bus equipped with three side emergency door exits pursuant to S5.2.3.1(b)(2), the third shall be located on the right side of the bus.

* * * * *

(c) *Emergency exit windows.* A bus equipped with emergency exit windows shall have an even number of such windows, not counting a push-out rear window required by S5.2.3.1(b). Any side emergency exit windows shall be evenly divided between the right and left sides of the bus. A bus shall not be equipped with both sliding and push-out windows on its sides.

* * * * *

S5.3.1 Each emergency exit not required by S5.2.3 shall be releasable by operating one or two mechanisms located within the regions specified in Figure 1, Figure 2, or Figure 3. The lower edge of the region in Figure 1, and Region B in Figure 2, shall be located 13 centimeters above the adjacent seat, or 5 centimeters above the armrest, if any, whichever is higher.

S5.3.2. When tested under the conditions of S6., both before and after the window retention test required by S5.1, each emergency exit not required by S5.2.3 shall allow manual release of the exit by a single occupant using force applications each of which conforms, at the option of the manufacturer, either to paragraphs (a) or (b) of this section. Each exit shall have not more than two release mechanisms. In the case of exits with one release mechanism, the mechanism shall require two force applications to release the exit. In the case of exits with two release mechanisms, each mechanism shall require one force application to release the exit. At least one of the force applications for each exit shall differ from the direction of the initial motion to open the exit by no less than 90° and no more than 180°.

* * * * *

S5.3.3.1 When tested under the conditions of S6., both before and after the window retention test required by S5.1, each school bus emergency exit door shall allow manual release of the door by a single person, from both inside and outside the passenger compartment, using a force application that conforms to paragraphs (a) through (c) of this section, except a school bus with a GVWR of 10,000 pounds or less does not have to conform to paragraph (a). The release mechanism shall operate without the use of remote controls or tools, and notwithstanding any failure of the vehicle's power system. When the release mechanism is not in the position that causes an emergency exit door to be closed and the vehicle's ignition is in the "on" position, a continuous warning sound shall be audible at the driver's seating position and in the vicinity of that emergency exit door.

* * * * *

(b) *Type of motion:* Upward from inside the bus; at the discretion of the manufacturer from outside the bus. Buses with a GVWR of 10,000 pounds or less shall provide interior release mechanisms that operate by either an upward or pull-type motion. The pull-type motion shall be used only when

the release mechanism is recessed in such a manner that the handle, level, or other activating device, before being pulled, does not protrude beyond the rim of the recessed receptacle.

* * * * *

S5.3.3.2 When tested under the conditions of S6, both before and after the window retention test required by S5.1, each school bus emergency exit window shall allow manual release of the exit by a single person, from inside the passenger compartment, using not more than two release mechanisms located in specified low-force or high-force regions (at the option of the manufacturer) with force applications and types of motions that conform to either paragraph (a) or (b) of this section. In the case of windows with one release mechanism, the mechanism shall require two force applications to release the exit. In the case of windows with two release mechanisms, each mechanism shall require one application to release the exit. At least one of the force applications for each window shall differ from the direction of the initial motion to open their exit by no less then 90° and no more than 180°. Each release mechanism shall operate without the use of remote controls or tools, and notwithstanding any failure of the vehicle's power system. When a release mechanism is open and the vehicle's ignition is in the "on" position, a continuous warning shall be audible at the driver's seating position and in the vicinity of that emergency exit.

* * * * *

S5.3.3.3 When tested under the conditions of S6, both before and after the window retention test required by S5.1, each school bus emergency roof exit shall allow manual release of the exit by a single person, from both, inside and outside the passenger compartment, using not more than two release mechanisms located at specified low-force or high-force regions (at the option of the manufacturer) with force applications and types of motions that conform to either paragraph (a) or (b) of this section. In the case of roof exits with one release mechanism, the mechanism shall require two force applications to release the exit. In the case of roof exits with two release mechanisms, each mechanism shall require one application to release the exit. At least one of the force applications for each roof exit shall differ from the direction of the initial push-out motion of the exit by no less than 90° and no more than 180°.

* * * * *

S5.4 *Emergency exit opening.*

S5.4.1 After the release mechanism has been operated, each emergency exit not required by S5.2.3 shall, under the conditions of S6., before and after the window retention test required by S5.1, using the reach distances and corresponding force levels specified in S5.3.2, allow manual opening by a single occupant to a position that provides an opening large enough to admit unobstructed passage, keeping a major axis horizontal at all times, of an ellipsoid generated by rotating about its minor axis an ellipse having a major axis of 50 centimeters and a minor axis of 33 centimeters.

S5.4.2 *School bus emergency exist opening.*

S5.4.2.1 *School buses with a GVWR of more than 10,000 pounds.*

* * * * *

(c) *Emergency exit windows.* After the release mechanism has been operated, each emergency exit window of a school bus shall, under the conditions of S6., before and after the window retention test required by S5.1, using force levels specified in S5.3.3.2, be manually extendable by a single occupant to a position that provides an opening large enough to admit unobstructed passage, keeping a major axis horizontal at all times, of an ellipsoid generated by rotating about its minor axis an ellipse having a major axis of 50 centimeters and a minor axis of 33 centimeters.

S5.4.2.2 *School buses with a GVWR of 10,000 pounds or less.*

* * * * *

S5.5.1 In buses other than school buses, and except for windows serving as emergency exists in accordance with S5.2.2(b) and doors in buses with a GVWR of 10,000 pounds or less, each emergency door shall have the designation "Emergency Door" or "Emergency Exit" and every other emergency exit shall have the designation "Emergency Exit" followed by concise operating instructions describing each motion necessary to unlatch and open the exit, located within 15 centimeters of the release mechanism.

* * * * *

Issued on November 23, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–29226 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–59–M

49 CFR Part 583

[Docket No. 92–64; Notice 4]

RIN 2127–AE63

Motor Vehicle Content Labeling; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Correction to Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document contains a correction to the NPRM that was published on Friday, November 19, 1993 (58 FR 61042). This NPRM explains the regulations proposed by NHTSA to implement the domestic content labeling provisions of the American Automobile Labeling Act. Other corrections to the November 19 proposed rule were published in the November 26 **Federal Register** (58 FR 62415).

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, room 5313, 400 Seventh Street SW., Washington, DC 20590 (202–366–4797).

SUPPLEMENTARY INFORMATION: As published, the proposed regulatory text contained an error which may prove to be misleading. Therefore, the agency is correcting this error.

Correction of Publication

Accordingly, the publication on November 19, 1993 of the NPRM, Docket No. 92–64, Notice 3, is corrected as follows:

§ 583.10 [Corrected]

Paragraph 1. On page 61061, in the second column, § 583.10(b)(1), the first word of line eight of the paragraph, the word "allied" is corrected to read "outside".

* * * * *

Issued: November 24, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–29259 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition To List Nine Bexar County, TX, Invertebrates

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petition has been found to present substantial information indicating that listing nine Bexar County, Texas, invertebrates (*Batrisodes venyivi, Cicurina baronia, Cicurina madla, Cicurina venii, Cicurina vespera, Neoleptoneta microps, Rhadine exilis, Rhadine infernalis,* and *Texella cokendolpheri*) as threatened or endangered may be warranted. A status review is initiated on these nine species.

DATES: The finding announced in this notice was made on November 16, 1993. Comments and information from all interested parties should be submitted by January 3, 1994.

ADDRESSES: Information, comments, or questions should be submitted to the State Administrator, U.S. Fish and Wildlife Service, Ecological Services Field Office, 611 East 6th Street, room 407, Austin, Texas 78701. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ruth Stanford, Ecologist, at the above address (512/482–5436).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species.

Patricia K. Cunningham of the Helotes Creek Association and individuals representing the Balcones Canyonlands Conservation Coalition, the Texas Speleological Association, the Alamo Group of the Sierra Club, and the Texas Cave Management Association submitted a petition to the Service to add nine invertebrates from Bexar County, Texas, to the List of Threatened and Endangered Wildlife. The petition was dated January 9, 1992, and received by the Service on January 13, 1992.

The petitioned invertebrates are all obligate cave-dwelling species (troglobites) of local distribution in dry caves in Bexar County. They include five spiders, one harvestman, and three beetles. These species are probably predaceous on the eggs, larvae, or adults of other cave invertebrates. Troglobites are subterranean, inconspicuous, and difficult to study (Mitchell and Reddell 1971). However, there is biological information available on the Bexar County invertebrates in that we know all of these species are obligate cave-dwellers and that their continued existence depends on the ecological stability of the cave environments in which they are found. Although there is little specific information available on their microhabitat requirements, their macrohabitat requirement (caves and possibly interstitial spaces associated with caves) is known.

Cicurina baronia, Cicurina madla, Cicurina venii, Cicurina vespera, and *Neoleptoneta microps* are all small, eyeless, or essentially eyeless, troglobitic spiders. *Texella cokendolpheri* is a small, eyeless harvestman. *Rhadine exilis* and *Rhadine infernalis* are small, essentially eyeless ground beetles. *Batrisodes venyivi* is a small, eyeless mold beetle. All four *Cicurina*, the *Texella*, and the *Batrisodes* did not have formal species names in the petition, but taxonomic descriptions and names have since been published (Chandler 1992, Gertsch 1992, Ubick and Briggs 1992).

The entire ranges of these species occur in north and/or northwest Bexar County. The species and their habitat may be threatened by a number of factors including destruction and/or deterioration of habitat by commercial, residential, and road construction; filling of caves; loss of permeable cover; potential contamination from such things as septic effluent, sewer leaks, runoff, and pesticides; predation by and competition with non-native fire ants (*Solenopsis invicta*); and vandalism.

Fire ants: Fire ants are a major threat to the cave invertebrates. The significance of this threat and the difficulty of controlling fire ants should not be underestimated. Fire ants are voracious predators and there is evidence that overall arthropod diversity drops in their presence (Vinson and Sorenson 1986, Porter and Savignano 1990). Even in the unlikely event that fire ants do not affect the proposed species directly, their presence in and around caves could have a drastic detrimental effect on the cave ecosystem through loss of species, inside the cave and out, that provide nutrient input and critical links in the food chain.

Controlling fire ants once they have invaded the cave and vicinity is difficult. Chemical control methods have some effectiveness but the effect of these agents on non-target species is unclear. Consequently, use of chemicals to control fire ants in and around caves is not advisable. Currently, the Service recommends only boiling water treatment for control of fire ant colonies near caves inhabited by listed invertebrates in Travis and Williamson counties. This method is labor intensive and only moderately effective. Presently, the burden of carrying out such practices is not a designated or mandated duty of any agency, individual, or organization. This type of control will likely be needed indefinitely or until a long-term method of fire ant control is developed.

Destruction/deterioration of habitat: Destruction of caves in Bexar County and throughout central Texas is common (Elliott 1990, Veni 1991). Veni (1991) estimates that, at present, 26 percent of known caves in Bexar County have been destroyed through filling with dirt, rocks, concrete, or other materials; capping or covering by roads or buildings; and "blasting out of existence" by construction and quarrying operations. He anticipates that the total number of caves will continue to decrease as discovery of new caves decreases and more known caves are destroyed.

The northwest quadrant of Bexar County has a high potential for development. Information in the petition refers to existing, ongoing, and proposed developments and the likelihood of future growth in north and northwest Bexar County. The Edwards Underground Water District (1993) presents data suggesting that the Edwards Aquifer recharge zone in northwest Bexar County is "poised for explosive development as the economy rebounds." Most of the caves containing the petitioned invertebrates are located within the Edwards Aquifer recharge zone.

While the important cave entrances may themselves not be in imminent

danger from development, cave environments can be negatively impacted by runoff, chemical spills, sewer leaks, pesticide use, and septic effluent associated with development on nearby properties within the karst zone. The caves are situated within the porous limestone that forms the Edwards Aquifer and are susceptible to contamination originating on property where the cave entrance lies, as well as on properties that lie above and adjacent to subterranean reaches of the cave. Dramatic evidence that contaminants can move through cavernous limestone is presented by Russell (1987).

Parameters of the cave environment include a relatively constant, high humidity and stable temperature, and low energy input (Howarth 1983, Holsinger 1988, Elliott and Reddell 1989). Nutrient availability and moisture are critical limiting factors in cave environments (Barr 1968). Adaptations to the high relative humidity and low nutrient availability typical of caves are common among troglobites (Mitchell 1967, Barr 1968, Howarth 1983), and the invertebrates in question exhibit many of these adaptations (Barr 1960, Barr 1974, Gertsch 1974). Nearly all food energy in caves must be imported from the exterior (Holsinger 1988). Energy enters areas near the cave entrance via species that move between the surface and the cave and via organic matter that washes into the caves. In deeper reaches of the cave, the primary input of energy is through water containing dissolved organic matter, percolating through the karst through fissures and solution features (Howarth 1983, Holsinger 1988, Elliott and Reddell 1989). Rapid, uncontrolled urbanization in northern Bexar County would likely result in a dramatic increase in impermeable cover in areas surrounding many of the caves. An increase in impermeable cover could result in decreased percolation of water into the caves via the karst and have a detrimental effect on the moisture regime and nutrient input critical to cave-dwelling species.

After a review of the petition and other available information, the Service has found that the petition presented substantial information that listing *Batrisodes venyivi, Cicurina baronia, Cicurina madla, Cicurina venii, Cicurina vespera, Neoleptoneta microps, Rhadine exilis, Rhadine infernalis,* and *Texella cokendolpheri* as threatened or endangered species may be warranted. This finding initiates a status review for these invertebrates as required under section 4(b)(3)(A) of the Act. Within one year from the date the petition was received, the Service is required under section 4(b)(3)(B) of the Act to make a finding as to whether the petitioned action is warranted.

The Service would appreciate any additional data, information, or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of these nine species, including specific information on threats and distribution. Comments should be submitted by January 31, 1994, to be considered in the 12-month petition finding.

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Author

This notice was prepared by Ruth Stanford and Alisa Shull, (See **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: November 16, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–29399 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[I.D. No. 112293B]

Atlantic Sea Scallop Fishery; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary adjustment of standards; notice of public hearing and request for comments.

SUMMARY: NMFS will hold a public hearing to solicit public input on a temporary adjustment of the meat count/shell height standards for Atlantic sea scallops.

DATES: The public hearing will be held on December 9, 1993, at 9:30 a.m. Written comments will be accepted through December 9, 1993, at the address given below.

ADDRESSES: The December 9, 1993, hearing will be held in conjunction with the New England Fishery Management Council (Council) meeting at the King's Grant Inn, Route 128 at Trask Lane, Danvers, Massachusetts.

Written comments should be addressed to Richard Roe, Director, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, Fishery Management Operations, NMFS Northeast Region, 508–281–9273.

SUPPLEMENTARY INFORMATION: Section 650.22 of the regulations implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) (50 CFR part 650) provides authority to the Regional Director to adjust temporarily the meat count/shell height standards upon finding that specific criteria are met. The standards can be adjusted within a range from 25 to 40 meats per pound and may be adjusted no more than 5 meats by any one adjustment. The Regional Director has considered the criteria specified in § 650.22(c) and has decided to recommend an adjustment to the standards from 30 to 33 meats per pound [shell height from 3½ inches (89 mm) to $3^{11}/_{16}$ inches (94 mm)] for the period February 1, 1994 through February 28, 1994.

The regulations require the Regional Director to hold a public hearing on this recommendation and to solicit comments from the Council. The Regional Director may modify this recommendation based on comments from the Council or the public. After consideration of the full record, a final determination will be made by the Regional Director whether or not to adjust the standards. If the Regional Director determines that the standards should be adjusted, notice will be published in the **Federal Register**.

Dated: November 24, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–29363 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 229
Wednesday, December 1, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 26, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection: (2) Title of the information collection; (3) form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Agricultural Marketing Service

Cranberries Grown in the States of MA, RI, CT, NJ, WI, MN, OR, WA, and Long Island in the State of NY, Marketing Order No. 929.
Recordkeeping; Annually
Farms; businesses or other for-profit; 1,684 responses; 849 hours
Mark A. Hessel (202) 720–3923.

Reinstatement

- Animal and Plant Health Inspection Service

Poultry Affected by Salmonella Enteritidis—9 CFR 82 Subpart G VS 10–4 and 10–4A, 20–1, 20–4, & SE 20–2 & 20–3
Recordkeeping; On occasion
State or local governments; farms; Federal agencies or employees; 40,961 responses; 18,768 hours
Ronald J. Day (301) 436–4974.

Donald E. Hulcher,
Department Clearance Officer.
[FR Doc. 93–29455 Filed 11–30–93; 8:45 am]
BILLING CODE 3410–01–M

Federal Grain Inspection Service

Request for Comments on the Applicants for Designation in the Geographic Areas Currently Assigned to the Gibson City (IL), Indianapolis (IN), and Springfield (IL) Agencies, and the State of Wyoming

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Donald Swanstrom dba Gibson City Grain Inspection Department (Gibson City), Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis), Springfield Grain Inspection, Inc. (Springfield), and the Wyoming Department of Agriculture (Wyoming).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by December 31, 1993.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 30, 1993, **Federal Register** (58 FR 51047), FGIS asked persons interested in providing official services in the geographic areas assigned to Gibson City, Indianapolis, Springfield, and Wyoming to submit an application for designation. Applications were due by October 29, 1993.

Indianapolis and Wyoming each applied for designation in the entire area currently assigned to them.

There were two applicants for the Gibson City area. Donald Swanstrom dba Gibson City Grain Inspection Department proposing to incorporate and do business as Gibson City Grain Inspection, Inc., applied for designation in the area currently assigned to Gibson City, except for: The area north of Highway 116, west of Highway 47, and southeast of the Southern Pacific Railroad; and Farm Service, Arrowsmith, McLean County (located inside Central Illinois Grain Inspection, Inc.'s, area).

Central Illinois Grain Inspection, Inc. (Central Illinois), applied for designation to serve the area north of Highway 116, west of Highway 47, and southeast of the Southern Pacific Railroad; and Farm Service, Arrowsmith, McLean County, in addition to the area they are already designated to serve. The Gibson City and Central Illinois agencies are contiguous official agencies.

There were two applicants for the Springfield area. Springfield applied for designation in the entire area currently assigned to it except for: Chestervale Elevator Company, Chestervale, Logan County (located inside Decatur Grain Inspection, Inc.'s, area).

Decatur Grain Inspection, Inc. (Decatur), applied for designation to serve Chestervale Elevator Company, Chestervale, Logan County, in addition to the area they are already designated to serve. The Springfield and Decatur

agencies are contiguous official agencies.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 22, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–29232 Filed 11–30–93; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Decatur (IL), and McCrea (IA) Agencies and the State of South Carolina

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS announces the designation of Decatur Grain Inspection, Inc. (Decatur), John R. McCrea Agency, Inc. (McCrea), and the South Carolina Department of Agriculture (South Carolina) to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: January 1, 1994.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 30, 1993, **Federal Register** (58 FR 34983), FGIS announced that the designations of Decatur, McCrea, and South Carolina end on December 31, 1993, and asked persons interested in providing official services within the specified geographic areas to submit an application for designation. Applications were due by July 30, 1993. Decatur, McCrea, and South Carolina, the sole applicants, each applied for designation in the entire area currently assigned to them.

FGIS requested comments on the applicants in the September 1, 1993, **Federal Register** (58 FR 46157). Comments were due by October 1, 1993. FGIS received no comments by the deadline. FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Decatur, McCrea, and South Carolina are able to provide official services in the geographic areas for which they applied.

Effective January 1, 1994, and ending December 31, 1996, Decatur, McCrea, and South Carolina are designated to provide official inspection services in the geographic areas specified in the June 30, 1993 **Federal Register**.

Interested persons may obtain official services by contacting Decatur at 217–429–2466, McCrea at 319–242–2073, and South Carolina at 803–554–1311.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 22, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–29233 Filed 11–30–93; 8:45 am]

BILLING CODE 3410–EN–F

Request for Applications From Persons Interested in Designation to Provide Official Services in the Geographic Areas Presently Assigned to the Memphis (TN) Agency and the State of Alaska

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Memphis Grain and Hay Association (Memphis), and the Alaska Department of Natural Resources, Division of Agriculture (Alaska) will end May 31, 1994, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before December 31, 1993.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Memphis, main office located in Memphis, Tennessee, and Alaska, main office located in Palmer, Alaska, to provide official grain inspection services under the Act on June 1, 1991.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Memphis and Alaska end on May 31, 1994.

The geographic area presently assigned to Memphis, in the States of Arkansas and Tennessee, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Craighead, Crittenden, Cross, Lee, Mississippi, Phillips, Poinsett, and St. Francis Counties, Arkansas.

Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Henderson, Lauderdale, Madison, McNairy, Shelby, and Tipton Counties, Tennessee.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Continental Grain Co., Tiptonville, Lake County, Tennessee (located inside Cairo Grain Inspection Agency, Inc.'s, area); and Lockhart-Coleman Grain Company, Augusta,

Woodruff County, Arkansas (located inside Little Rock Grain Exchange Trust's area).

The geographic area presently assigned to Alaska, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Alaska, except those export port locations within the State which are serviced by FGIS.

Interested persons, including Memphis and Alaska, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning June 1, 1994, and ending May 31, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 22, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–29234 Filed 11–30–93; 8:45 am]

BILLING CODE 3410–EN–F

Inadequate Demand for Official Services in the Fort Worth (TX) Area

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS has determined there is inadequate demand for official services to designate any organization to provide official services in the Fort Worth area.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

On March 31, 1993, Amarillo Grain Exchange, Inc. (Amarillo), notified FGIS that they wanted to cease providing official services in the Fort Worth portion of their area due to the low volume of requests for official inspection services. In the April 29, 1993, **Federal Register** (58 FR 25966), FGIS asked persons interested in providing official services in the Fort Worth area to submit an application for designation. Applications were due by May 31, 1993. There were two applicants: William K. Mathews proposing to incorporate and do business as North Texas Grain Inspection, Inc. (North Texas), and Basil B. Aumiller. FGIS also requested comments on the need for official services in the Fort Worth area. There were three comments requesting that official services be provided in the Fort Worth area.

FGIS published a June 30, 1993, **Federal Register** notice (58 FR 34984) to provide interested persons the opportunity to present comments concerning the applicants. There were two comments, both from grain firms supporting designation of William K. Mathews.

Mr. Aumiller withdrew his application based on his determination that there is an insufficient need for services in that area. Mr. Mathews then requested that if North Texas is designated as the official agency that the designation not begin until January 1, 1994, citing a lack of demand for services.

FGIS then contacted most grain firms in the Fort Worth area and determined that, pursuant to the provisions of the Act, there is an insufficient need for official services to designate an official agency. Therefore, FGIS is not designating an official agency to provide services in the Fort Worth area. Any firms which may require official inspection services should contact the FGIS Plainview Field Office at 806–293–4482 (FAX: 806–293–9365).

Pursuant to Amarillo request to cease providing official services in the Fort Worth portion of their area, FGIS is amending their geographic area. Effective September 15, 1993, Amarillo's assigned geographic area is amended by deleting the following counties: Bell, Bosque, Brown, Coleman, Collin, Comanche, Cooke, Dallas, Denton, Eastland, Ellis, Erath, Falls, Fannin, Grayson, Hamilton, Hill, Hood, Hunt, Jack, Johnson, Lamar, Limestone, McLennan, Milam, Montague, Parker, Palo Pinto, Red River, Somervell, Stephens, Tarrant, Young, and Wise, Texas.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 22, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–29235 Filed 11–30–93; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Product Characteristics—Design Check-Off List.

Form numbers: Agency—ITA–426P, OMB—0625–0035.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 2,000 respondents; 1000 reporting hours.

Average hours per response: 30 minutes.

Needs and uses: The International Trade Administration (ITA sponsors up to 120 overseas trade fair events each fiscal year. In addition, there is a Matchmaker Program of approximately 20 events annually, which is a combination of multi-stop trade missions and small equipment from participating U.S. firms information on the physical nature, power (utility), and graphic requirements of the products and services to be displayed in a U.S. pavilion or Matchmaker event, e.g. electrical voltage, dimension/weight of equipment to be exhibited, compressed air/gas, noise level, raw materials used for production during the exhibition, special anchorage (against vibration) photographs/wall graphics to be used, and company brochure to be forwarded. Without this information, ITA would be unable to provide a pavilion facility that would effectively support the sales/marketing and presentation objectives of the U.S. participants.

Affected public: Businesses or other for profit; small businesses or organization.

Frequency: On occasion.

Respondent's obligation: Voluntary.

OMB desk officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edwards Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: November 24, 1993.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 93–29449 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of the Census

[Docket No. 931106–3306]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code, sections 182, 224, and 225, I have determined that the Census Bureau needs to collect data covering annual sales, year-end inventories, purchases and accounts receivables to provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar surveys that we have conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, purchases of merchandise and accounts receivable balances for 1993, and year end inventories for 1992 and 1993. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Ronald Piencykoski or Dorothy Engleking on (301) 763–5294.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. The 1992 Economic Censuses are currently being tabulated. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1993 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

This survey was cleared by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, under OMB Control No. 0607–0013. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 22, 1993.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 93–29343 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–07–P

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held December 15, 1993, at 9 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis on implementation of the Export Administration Regulations (EARS), and provides for continuing review to update the EARS as needed.

Agenda

General Session

1. Opening remarks by the Chairman
2. Presentation of papers or comments by the public
3. Reports by working groups:
   - Licensing Procedures
   - Regulatory Review
   - Legislation
   - Multilateral Controls and Harmonization
4. Reports on Trade Promotion Coordinating Committee (TPCC) projects
5. Enhanced Proliferation Control Initiative (EPCI) clarification/refinement project

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meetings date to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA, room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 18, 1993, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information, call Lee Ann Carpenter at (202) 482–2583.

Dated: November 26, 1993.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–29450 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 56–3]

Foreign-Trade Zone 59—Lincoln, Nebraska Proposed Expansion of Subzone 59A, Kawasaki Motors Manufacturing Corporation, U.S.A. Plant (Motorcycles, Jetskis, All Terrain Vehicles) Lincoln, NE

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Lincoln Foreign-Trade Zone, Inc., grantee of FTZ 59, requesting authority to expand the boundary of FTZ Subzone 59A at the Kawasaki Motors Manufacturing Corporation, U.S.A. (KMMC) plant in Lincoln, Nebraska. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 22, 1993.

Subzone 59A was approved by the FTZ Board in 1980 for the manufacture of motorcycles, jet skis and four wheel all terrain vehicles (Board Order 163, 45 FR 58637, 9/4/80). The subzone currently consists of two sites in Lincoln, Nebraska: *Site 1* (43 acres)—manufacturing facilities located within KMMC's 305-acre manufacturing plant site, 6600 NW. 27th Street; and, *Site 2* (14,472 sq. ft.)—warehouse, located at 4725 N. 56th Street.

The applicant is now requesting authority to expand the boundary of *Site 1* to include KMMC's entire 305-acre plant site. The expansion area is currently undeveloped, but a new warehouse facility is planned. The application also requests that *Site 2* be deleted from the subzone boundary. No request for additional manufacturing authority is being made at this time.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 31, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 14, 1994).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 11133 "O" Street, Omaha, Nebraska 68137.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 22, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–29327 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–533–08]

Antidumping Duty Order: Certain Stainless Steel Wire Rods from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–1116.

Scope of Order

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on October 12, 1993, the Department of Commerce (Department) made its final determination that certain SSWR from India are being sold at less than fair value (58 FR 54110, October 20, 1993). On November 23, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain SSWR from India. These antidumping duties will be assessed on all unliquidated entries of certain SSWR from India entered, or withdrawn from warehouse, for consumption on or after August 5, 1993, the date on which the Department published its preliminary determination notice in the **Federal Register** (58 FR 41729). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise.

Manufacturers/Producers/Exporters	Margin Percentage
Mukand Ltd.	48.80
Sunstar Metals Ltd.	48.80
Grand Foundry Ltd.	48.80
All Others	48.80

In its final determination, the Department found that critical circumstances exist with respect to exports of SSWR from India. However, on November 23, 1993, the ITC notified the Department that retroactive assessment of antidumping duties is not necessary to prevent recurrence of material injury from massive imports over a short period. As a result of the ITC's determination, pursuant to section 735(c)(3) of the Act, we shall order Customs to terminate the retroactive suspension of liquidation and to release any bond or other security and refund any cash deposit required under section 733(e)(2) with respect all entries of subject merchandise entered, or withdrawn from warehouse, for consumption prior to August 5, 1993.

This notice constitutes the antidumping duty order with respect to

certain stainless steel wire rods from India, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: November 24, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–29451 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–DS–P

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review of the final determination made by the Canadian International Trade Tribunal respecting gypsum board originating in or exported from the United States of America. (Secretariat File No. CDA–93–1904–02).

SUMMARY: This notice is effective November 22, 1993, the 31st day following the filing of a consent motion to terminate the binational panel review of this matter.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules, as amended.

Background

On February 23, 1993, The National Gypsum Company (Gold Bond Building Products Division) filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free Trade Agreement. Panel review was requested of the final affirmative injury determination made by the Canadian International Trade Tribunal respecting Gypsum Board originating in or exported from the United States of America. Notice of this determination was published in the **Federal Register** on January 30, 1993. The Binational Secretariat assigned Secretariat File No. CDA–93–1904–02 to this request.

Rule 73(2) of the Article 1904 Panel Rules provides, in pertinent part, that, "where all participants file Notices of Motion requesting termination, the panel review is terminated." A Consent Motion requesting termination was received from all participants on October 21, 1993. Pursuant to Rule 80(c) of the Article 1904 Panel Rules, the panel review in this matter was completed on the 31st day following the day on which the panel review was terminated (November 22, 1993).

Dated: November 24, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93–29441 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

[I.D. 112493B]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Permit Review Board will hold a public meeting on December 13–5, 1993, at the Red Lion Hotel—Columbia River, 1401 North Hayden Island Drive, Portland, OR. The meeting will begin on December 13 at 1 p.m.

The purpose of the meeting is to review appeals on the National Marine Fisheries Service denial of applications for West Coast groundfish limited entry permits. Appeals by the following persons will be heard at the meeting: Parker, Fulk, Pickens, Soreson/Stokes, Tran, Leinen. Hearings on appeals will begin on December 14 at 8 a.m.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–352.

Dated: November 24, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–29365 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 112493A]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 82nd meeting on December 13–15, 1993, at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI. The Council's Pelagics, Bottomfish, Budget and Executive Standing Committees will meet on December 13 at 1 p.m., and the full Council will meet on December 14 and 15 at 8 a.m. each day.

The Council will hear reports from islanders and fishery agencies on the status of fisheries throughout the region. The National Marine Fisheries Service (NMFS) will also report on the status of agency turtle research activities. The Council will discuss, and possibly take action on, the following issues:

(1) Alternative methods for harvesting capacity determination and management under Amendment #7 to the pelagics fishery management plan (Hawaii longline limited entry program);

(2) Data reporting needs throughout the region;

(3) The Western Pacific Council's role as lead council in multi-council pelagic fishery management activities;

(4) Progress on state management of the main Hawaiian Island bottomfish fishery;

(5) NMFS rejection of proposed Northwestern Hawaiian Islands daily catch reporting requirements;

(6) An economic review of the Northwestern Hawaiian Islands bottomfish fishery;

(7) Progress on a draft amendment and regulatory changes to the crustaceans fishery management plan;

(8) The status of the Pacific Fisheries Research program;

(9) Preferential rights of native fishermen; and

(10) Other business as required.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 541–1974; or fax: (808) 526–0824.

Dated: November 24, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–29364 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

November 26, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States agreed to increase the 1993 Guaranteed Access Level (GAL) for Category 632.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 60512, published on December 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 26, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on November 29, 1993, you are directed to increase the current Guaranteed Access Level for Category 632 to 5,500,000 dozen pairs.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–29448 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–DR–F

COMPETITIVENESS POLICY COUNCIL

Meeting

ACTION: Notice of forthcoming meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the Competitiveness Policy Council announces several forthcoming meetings.

DATES: December 10, 1993; 9 a.m to 2:30 p.m.

ADDRESSES: Eighth Floor Conference Center, 11 Dupont Circle, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Howard Rosen, Executive Director, Competitiveness Policy Council, suite 650, 11 Dupont Circle, NW., Washington, DC 20036, (202) 387–9017.

SUPPLEMENTARY INFORMATION: The Competitiveness Policy Council (CPC) was established by the Competitiveness Policy Council Act, as contained in the Trade and Competitiveness Act of 1988, Public Law 100–418, sections 5201–5210, as amended by the Customs and Trade Act of 1990, Public Law 101–382, section 133. The CPC is composed of 12 members and is to advise the President and Congress on matters concerning competitiveness of the US economy. The Council's chairman, Dr. C. Fred Bergsten, will chair each meeting.

The meeting will be open to the public subject to the seating capacity of the room. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

AGENDA: The Chairman will open the meeting with a report on the Council's activities since the release of its interim report. The Council will focus on technology and health care issues and will also consider additional business as suggested by its members.

Dated: November 29, 1993.

C. Fred Bergsten,

Chairman, Competitiveness Policy Council.

[FR Doc. 93–29373 Filed 11–30–93; 8:45 am]

BILLING CODE 6820–11–M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions to the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Littoral Warfare/Amphibious Warfare will meet on December 8, 9, and 10, 1993. The meeting will be held at The CNA Corporation, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8 a.m. and terminate at 5:30 p.m. on December 8; commence at 8 a.m. and terminate at 5 p.m. on December 9; and commence at 8 a.m. and terminate at 12:30 p.m. on December 10, 1993. All sessions of the meeting will be closed to the public.

The purpose of the meeing is to provide the Department of the Navy with (1) an assessment of the capabilities and readiness of the U.S. Navy and Marine Corps to effectively conduct littoral and amphibious warfare operations, and (2) recommendations for technological investments that can improve performance while reducing risk to Marine and Naval forces. The agenda will include briefings and discussions related to Theater Ballistic Missile Defense; the role of the SSN in Littoral Warfare; recent operations in Somalia; science and technology issues, C4I; Naval surface fire support; and strike, electronic, and riverine warfare.

These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to reclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander R. C. Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: November 24, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-29406 Filed 11-30-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94-155-000, et al.]

Catex Vitol Electric Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 24, 1993.

Take notice that the following filings have been made with the Commission:

1. Catex Vitol Electric Inc.

[Docket No. ER94-155-000]

Take notice that Catex Vitol Electric Inc. (CVE) on November 15, 1993, tendered for filing pursuant to Rules 105 and 107 of the Commission's Rules of Practice and Procedure, 18 CFR 385.105, 207 (1993), its Rate Schedule No. 1, to be effective 60 days from and after November 15, 1993, and a petition for waivers of and blanket approvals under various regulations of the Commission, and clarification of jurisdiction under section 201 of the Federal Power Act.

CVE intends to engage in electric power and energy transactions as a marketer. CVE's marketing activities will include purchasing capacity, energy and/for transmission services from electric utilities, qualifying facilities and independent power producers, and reselling such power to other purchasers. CVE proposes to charge rates mutually agreed upon by the parties, subject to the rate being at or below the buyer's expected cost of alternative supply, taking into account the value of services performed by CVE. All sales will be at arms-length, and no sales will be made to affiliated entities. CVE is not in the business of producing or transmitting electric power. Neither CVE nor any of its affiliates currently have or contemplate acquiring little to any electric power transmission or generation facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices subject to a ceiling equal to the purchaser's expected alternative cost of electric power, taking into account the value of services performed by CVE. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Ebensburg Power Co.

[Docket Nos. QF86-1074-004 and QF86-1074-005]

On November 15, 1993, Ebensburg Power Company tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the ownership of the facility.

Comment date: December 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Co.

[Docket No. ER94-167-000]

Take notice that on November 17, 1993, Idaho Power Company (IPC) tendered for filing exhibit revisions relating to monthly contract and energy requirements under the following jurisdictional agreements between IPC and various entities.

1. Transmission Service Agreement, dated June 27, 1988, Seattle City Light;

2. Agreement for Supply of Power and Energy, dated February 10, 1988, Utah Associated Municipal Power Systems;

3. Agreement for Supply of Power and Energy, dated July 5, 1987, Washington City, Utah;

4. Agreement for Supply of Power and Energy, dated February 23, 1989, Sierra Pacific Power Company;

5. Transmission Service Agreement, dated December 21, 1990, Bonneville Power Administration;

6. Transmission Service Agreement, dated June 5, 1989, Bonneville Power Administration.

IPC has requested an effective date for each of these revised exhibits of not less than 60 days from the date of filing.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Co.

[Docket No. ER94-172-000]

Take notice that Florida Power & Light Company (FPL) on November 16, 1993, tendered for filing two Exhibit A's to the Aggregate Billing Partial Requirements Service Agreement between Florida Power & Light Company and Seminole Electric Cooperative, Inc. FPL requests that the Exhibits be made effective December 18, 1990 and June 28, 1991 for the West Nassau and Morris delivery points, respectively.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER94-173-000]

Take notice that on November 18, 1993, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the "Operating Companies"), tendered for filing a notice of cancellation for certain duplicative rate schedule designations of the Operating Companies.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Gulf States Utilities Company

[Docket No. ES94-9-000]

Take notice that on November 19, 1993, Gulf States Utilities Company (Gulf States) filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $100 million of First Mortgage

Bonds as security for a short-term credit facility. Also, Gulf States requests exemption from the Commission's competitive bidding regulations.

Comment date: December 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Gulf States Utilities Company

[Docket No. ER94–166–000]

Take notice that Gulf States Utilities Company (Gulf States), on November 17, 1993, tendered for filing a rate schedule change with respect to Gulf States' electric transmission service to Cajun Electric Power Cooperative, Inc. (Cajun). The rate Schedule change is submitted in accordance with the court's order in *Gulf States Utilities Co.* v. *FERC*, 1 F.3d 288 (5th Cir. 1993), and requests approval of a rate surcharge to Cajun.

Gulf States requests an effective date for the rate surcharge of January 17, 1994.

A copy of the filing was served upon Cajun and the Louisiana Public Service Commission.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–156–000]

Take notice that on November 16, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC 117, an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for an increase in the annual fixed rate carrying charges of $614.52. Con Edison has requested that this increase take effect as of October 1, 1993.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Power Company

[Docket No. ER94–154–000]

Take notice that Duke Power Company (Duke or Company) on November 15, 1993, tendered for filing a Settlement Agreement dated November 1, 1993, designated as Settlement Agreement No. 3, to its Interconnection Agreements between the Company and North Carolina Municipal Power Agency Number 1 (Power Agency); North Carolina Electric Membership Corporation (NCEMC), Saluda River Electric Cooperative, Inc. (Saluda River), and Piedmont Municipal Power Agency (PMPA). Duke, Power Agency, NCEMC, Saluda River, and PMPA are joint owners of the Catawba Nuclear Station. Under the terms of the Interconnection Agreements, Duke interconnects its generation and transmission system with the Catawba Nuclear Station, wheels electric power and energy to the members of the other joint owners, provides supplemental capacity and energy in excess of that provided by the owners' ownership interest, and provides back-up services. Duke states that Settlement Agreement No. 3 clarifies how certain calculations will be made under the Interconnection Agreements and resolves certain items of dispute.

Duke states that the Interconnection Agreements are on file with the Commission and have been designated as follows:

Rate Schedule FERC No. 271 (Power Agency)
Rate Schedule FERC No. 273 (NCEMC)
Rate Schedule FERC No. 274 (Saluda River)
Rate Schedule FERC No. 276 (PMPA)

Copies of this filing were mailed to Power Agency, NCEMC, Saluda River, PMPA, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Oklahoma Gas and Electric Co.

[Docket No. ER94–160–000]

Take notice that on November 12, 1993, Oklahoma Gas and Electric Company (OG&E) tendered for filing a Letter Agreement dated November 5, 1993, with Western Farmers Electric Cooperative regarding the installation of electrical facilities for the use and benefit of WFEC.

Copies of this filing have been served on WFEC, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power and Light Co.

[Docket No. ER94–158–000]

Take notice that on November 16, 1993, Wisconsin Power and Light Company tendered for filing with the Federal Energy Regulatory Commission two Letter Agreements between Wisconsin Power and Light Company (WP&L) and Consolidated Water Power Company (CWP). Under the Negotiated Capacity Agreement, WP&L will make capacity and associated energy available to CWP with negotiated degrees of firmness, variable capacity charges, and variable time duration. Under the General Purpose Energy Agreement, WP&L will make non-firm energy available to CWP, with terms and quantities to be arranged by mutual agreement.

Wisconsin Power and Light respectfully requests an effective date sixty (60) days from the date of filing.

A copy of the filing has been served on the Public Service Commission of Wisconsin.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Midwest Power Systems Inc.

[Docket No. ER94–157–000]

Take notice that on November 16, 1993, Midwest Power Systems Inc. (MPSI) tendered for filing Peaking and Participation Agreement (Agreement) dated March 14, 1991, between Corn Belt Power Cooperative (Corn Belt) and Iowa Power Inc., n/k/a MPSI. This Agreement's main emphasis is for MPSI to purchase capacity and energy from Corn Belt from May 1 through October 31 of the years 1991, 1992, 1993, and 1994. Paragraph 6 of the Agreement allows for MPSI to sell capacity and energy to Corn Belt, at Corn Belt's sole option, in the month of October of each respective year. Corn Belt is a rural power cooperative that can experience high usage in the month of October related to crop drying by their customers. This accounts for Corn Belt's need to have an option to purchase this capacity in October. This option was not utilized in 1991, but it was exercised by Corn Belt in October 1992 and 1993.

On July 30, 1993, the Commission issued its "Final Order" in Docket No. PL93–2–002, "Prior Notice and Filing Requirements", clarifying that agreements for "the sale of electric power and energy to any person" must be filed. The Final Order also established an amnesty period during which such filings can be brought up to date.

Pursuant to § 35.11 of the Commission's regulations, MPSI is requesting a waiver of the Commission's rules so the sale of capacity and energy may be accepted without notice for October 1992 and October 1993. MPSI believes this filing falls within the provisions of the amnesty period. However, if it does not, MPSI is requesting this waiver as an "extraordinary circumstance".

MPSI respectfully requests a waiver of the Commission's rules so that the Peaking Participation Agreement may be approved retroactive to May 1, 1991.

MPSI states that copies of this filing were served on Corn Belt and the Iowa Utilities Board.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29417 Filed 11–30–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–89–000, et al.]

CNG Transmission Corp., et al.; Natural Gas Certificate Filings

November 23, 1993.

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corp.

[Docket No. CP94–89–000]

Take notice that on November 18, 1993, CNG Transmission Corporation (CNG) 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP94–89–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate approximately 8,000 horsepower of compression, at CNG's new Chambersburg Compressor Station, in Franklin County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that the new Chambersburg Compressor Station will be located near the intersection of CNG's existing PL–1 pipeline and the jointly owned (Texas Eastern and CNG) CRP Line. With this facility, CNG states that it will increase service to the Mid-Atlantic region through its PL–1 pipeline system, which begins in Pennsylvania and traverses parts of Maryland and Virginia.

CNG states that it requires this new facility to mitigate the impact of a permanent release of certain services by Rochester Gas and Electric Corporation (RG&E). CNG states that it will mitigate the impact by remarketing such service to customers in the Mid-Atlantic region. It is stated that the Mid-Atlantic customers will be permanent replacement shippers for certain CNG and upstream pipelines services that are being permanently released by RG&E.

CNG states that during its Order No. 636 restructuring process, RG&E advised CNG that, with the construction of the Empire State Pipeline in upstate New York, RG&E would no longer need all of the services that had been allocated to it in the settlement of CNG's restructuring docket.

According to CNG, the service RG&E desires to permanently release, to be remarketed to others in the Mid-Atlantic region, consist of 58,891 Dekatherms per day (Dth/d) of firm transportation service and 60,000 Dth/d in storage service, totalling 118,891 Dth/d of transportation services on the CNG system. CNG states that the remarketing of the 58,891 Dth/d of transportation service also involves RG&E's release of certain upstream service on other interstate pipelines supporting the CNG service.

CNG states that it has remarketed a total of 102,000 Dth/d of these services to the following customers in the Mid-Atlantic region, with 16,891 Dth/d remaining to be remarketed somewhere in the Northeast: Washington Gas Light (WGL), Virginia Natural Gas, Inc. (VNG, an affiliate to CNG), Public Service Company of North Carolina (PSNC), The Eastern Group (TEG, a developer of a proposed cogeneration project in Hagerstown, Maryland), and Diamond Energy, Inc. (Diamond, an owner-operator of the existing Doswell "IPP" Electric Plant). CNG states that, with the exception of TEG, all of these customers are existing firm shippers on CNG's system.

CNG states that the customers have subscribed to the services being remarketed in the following quantities:

Type service	WGL (Dth/d)	VNG (Dth/d)	PSNC (Dth/d)	TEG (Dth/d)	Diamond (Dth/d)	Total (Dth/d)
FTNN	11,250	20,000	8,000	10,000	7,000	56,250
MATQ (000s)	4,106	7,300	2,290	3,650	2,555	20,531
GSS Demand	13,750	20,000	12,000	0	0	45,750
GSS Cap (000s)	1,031	1,040	720	0	0	2,791
Total MDQ	25,000	40,000	20,000	10,000	7,000	102,000

CNG states that the new Chambersburg Compressor Station will enable CNG to remarket the services being permanently released by RG&E to these Mid-Atlantic customers. CNG states that it will commence all of the remarketed services under existing authority in its Part 284 Blanket Certificate for transportation and storage services. CNG estimates the cost of construction at $13,535,000.

CNG submits that all of its customers benefit (economically and otherwise) by the remarketing of existing services from RG&E to the Mid-Atlantic customers. If the relevant RG&E services were not remarketed, CNG states that its customers would bear stranded upstream pipeline capacity costs of about $9.9 million, annually. By constructing the Chambersburg Compressor Station, and remarketing these existing services to Mid-Atlantic customers, at the costs proposed in this application, CNG states that it avoids these stranded costs, which would have been borne in the form of higher system rates by all CNG customers.

CNG states that other benefits include the above customers obtaining needed additional gas services in the Mid-Atlantic region at competitive prices, and the Chambersburg Compressor Station increasing the reliability and flexibility of CNG's system, providing benefits for all CNG customers.

CNG states that Texas Eastern filed a companion application to this project on October 1, 1993, in Docket No. CP94–6–000. CNG states that the facilities proposed by Texas Eastern, on the jointly-owned CRP line, constitute an "operational loop" on CNG's pipeline system, and are necessary to

permit CNG to remarket the services proposed herein.

Comment date: December 14, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Petal Gas Storage Co.

[Docket No. CP93–69–001]

Take notice that on November 16, 1993, Petal Gas Storage Company (Petal), filed an application for an amendment of its certificate which was issued on August 4, 1993, in Docket No. CP93–69–000.[1] In that docket Petal was granted authorization for its storage facility which included the installation of booster compression at its United[2] Station consisting of a single 1,000 Hp unit. With this application, Petal is requesting an amendment to omit the authorization for it to install the booster compressor unit at its Koch Gateway Station and to eliminate its authority to provide firm injection of gas received at its Koch Gateway receipt point. Petal also requests that it be allowed to immediately begin construction of its Koch Gateway Station and the lateral to Koch Gateway Pipeline, so that it can provide firm delivery service of storage withdrawals to Koch Gateway's pipeline, all as more fully set forth in the application on file with the Commission and open to public inspection.

Petal states that when it filed its application in Docket No. CP93–69–000, it understood that the 12-inch pipeline to which it would be connected at the Koch Gateway Station had an operating pressure of approximately 500 psig. However, Petal now states that it has received information indicating that the actual operating pressure of the Koch Gateway line would be substantially less, at approximately 350 psig. To provide a firm injection service at the Koch Gateway interconnect, this lower pressure would require Petal to install more compression capacity at the Koch Gateway Station than was originally contemplated in its application or was authorized by the Commission. Also, in its original application, Petal contemplated providing firm injection service from Koch Gateway of up to 30,000 MMBtu per day, however, since the operating pressure of the Koch Gateway pipeline is lower than originally assumed, a single 1,000 Hp unit will be insufficient to offer any firm injection service from the Koch Gateway receipt point.

Petal states that the authority to commence construction immediately will allow it to include all work associated with the Koch Gateway Station during the current construction mobilization.

Comment date: December 14, 1993, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Koch Gateway Pipeline Co.

[Docket No. CP94–75–000]

Take notice that on November 12, 1993, Koch Gateway Pipeline Company (KGPC), P.O. Box 1478, Houston, Texas 77251 filed an application in Docket No. CP94–75–000 for permission and approval to abandon by sale to Koch Pipelines, Inc. (Koch Pipelines) certain natural gas transmission facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

KGPC proposes to abandon by sale to Koch Pipelines approximately 200 miles of main line and 27 miles of loop line, referred to as Index 276, from Whistler Junction in Mobile County, Alabama to the Lirette Plant in Terrebone Parish, Louisiana. KGPC states that Koch Pipelines intends to operate these facilities as a liquid products line.

KGPC states that Index 276 was originally constructed in the 1940's to supply the natural gas requirements of national defense industries in lower Louisiana and along the Gulf Coast to Pensacola, Florida. KGPC further states that it currently serves its markets in southern Louisiana and along the coast to Mobile, Alabama with a higher pressure 30-inch pipeline, Index 300, which runs parallel to Index 276. KGPC explains that due to the low currently effective maximum allowable operating pressure of 358 psi for Index 276, the end-to-end capacity of this line has been reduced to 15,000 Mcf of natural gas per day. KGPC further explains that at present Index 276 functions as header which distributes gas from Index 300 to smaller laterals. KGPC states that Index 276 is not presently used for end-to-end transportation as originally intended. KGPC further states that it would maintain, without interruption, all current services provided through Index 276.

Comment date: December 14, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. K N Interstate Gas Transmission Co.

[Docket No. CP94–94–000]

Take notice that on November 19, 1993, K N Interstate Gas Transmission Company (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP94–94–000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate two new delivery taps under K N Interstate's blanket certificate issued in Docket No. CP89–1043–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N Interstate states that K N Energy, Inc. (K N), a local distribution company, has requested the addition of two new delivery points in Howard and Stanton Counties, Nebraska under an existing transportation service agreement between K N Interstate and K N. It is further stated that the proposed delivery points would be located on K N Interstate's main transmission system and would facilitate the delivery of natural gas to K N for distribution to new direct retail customers.

Comment date: January 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. SunShine Interstate Transmission Company

[Docket No. CP93–361–001]

Take notice that on November 19, 1993, SunShine Interstate Transmission Company (SITCO), 500 Renaissance Center, Detroit, Michigan 49243, filed in Docket No. CP93–361–001 a petition to amend the application filed in Docket No. CP93–361–000 to revise the proposed facilities to be covered by the original application and to revise the proposed initial rates as a result of the facility modification, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

SITCO states that it would acquire the facilities of Five Flags Pipeline Company (Five Flags), a Florida intrastate pipeline company, with facilities consisting of 41 miles of 10-inch pipeline and 12.6 miles of 8-inch pipeline, plus related facilities. SITCO also states that, by purchasing the facility from Five Flags, it no longer requires to construct and operate the Pensacola lateral consisting of 18 miles of 12-inch pipeline, 3.5 miles of 10-inch pipeline and 5.9 miles of 6-inch pipeline and four customer delivery points, all located in the State of Florida. Accordingly, SITCO now proposes to delete the request to construct and operate the Pensacola lateral. In addition, SITCO seeks authorization to construct and operate a 2.2 mile segment of 6-inch diameter lateral system in Escambia County, Florida to provide natural gas

[1] 64 FERC § 61,090 (1993).

[2] United Pipeline Company's name has been changed to Koch Gateway Pipeline.

transportation service to Energy Services of Pensacola (Energy Services), a firm transportation customer.

SITCO indicates that deleting the request to construct the Pensacola lateral and replacing it with the acquisition of the Five Flags system would result in SITCO saving approximately $10.1 million ($13.3 million savings from not constructing the Pensacola lateral less $3.2 million for acquisition cost of the facilities of Five Flags). SITCO also indicates that the Energy Services lateral would cost $1.3 million.

SITCO indicates that the reduced construction cost would reduce the initial rates proposed in the original application. It is stated that under Rate Schedule FT, SITCO's reservation rate would be reduced from $4.4513 per dt to $4.2449 per dt and its 100% load factor rate would be reduced from $0.1207 per dt to $0.1162 per dt.

SunShine proposes no other changes to the original proposal.

Comment date: December 14, 1993, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

6. Florida Gas Transmission Co.

[Docket No. CP94–96–000]

Take notice that on November 19, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–96–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new meter station and 0.27 miles of 8-inch lateral line to accommodate gas deliveries to Kissimmee Utility Authority (Kissimmee) under an existing firm transportation agreement, under the authorization issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a new turbine meter station and related appurtenant facilities. It is stated that the new lateral, Kissimmee Cane Island Lateral, will consist of approximately 0.27 miles of 8-inch pipe connecting to FGT's St. Petersburg lateral. It is stated that the average quantity that FGT will deliver through the subject meter station is 5,061 MMBtu per day and 1,847,625 MMBtu per year. FGT states that Kissimmee shall reimburse it for all construction costs, which are estimated to be $433,000. It is stated that the end-use will be at a Kissimmee-owned site.

Comment date: January 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

7. National Fuel Gas Supply Corp.

[Docket No. CP94–71–000]

Take notice that on November 12, 1993, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP94–71–000 a request pursuant to § 157.205 of the Commission's Regulations to abandon in place certain facilities on its lateral Line T in Mercer County, Pennsylvania and by transfer to National Fuel Distribution Corporation (Distribution), a local distribution company, certain facilities on its lateral Line S and Station T–No. 736 in Mercer County, Pennsylvania under National's blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National proposes to abandon in place approximately 8 miles and 14,517 feet of its 10-inch lateral Line T located in Mercer County, Pennsylvania; and to abandon a portion of its lateral Line S and Meter and Regulation Station T–No. 736 located in Mercer County, Pennsylvania by transfer to Distribution. National states that the estimated cost of the facilities to be abandoned is $115,000. National states that all the customers served by these facilities have consented to the abandonment. National indicates that it has provided notice of the proposed abandonments to the Pennsylvania Public Utility Commission, the state commission that has jurisdiction over Distribution.

Comment date: January 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Border Pipeline Co.

[Docket No. CP93–3–002]

Take notice that on November 17, 1993, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a Petition to Amend Order requesting authority to add receipt and delivery points on the Northern Border system as secondary receipt and delivery points to Pan-Alberta Gas (U.S.) Inc.'s (PAG-US) U.S. shippers service agreement, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Northern Border states that the purpose of its proposal is to allow PAG-US to perform under a system balancing agreement (SBA) between PAG-US and Northern Natural Gas Company (Northern). The SBA will assist Northern in meeting Northern's and its shippers' operating needs in the Order No. 636 environment.

Comment date: December 14, 1993, in accordance with the first two paragraphs of Standard Paragraph F at the end of this notice.

9. Texas Eastern Transmission Corp.

[Docket No. CP94–6–000]

Take notice that on October 1, 1993, Texas Eastern Transmission Corporation (Texas Eastern) 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP94–6–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation of incremental pipeline and compression facilities necessary for Texas Eastern to render an incremental firm transportation service for CNG Transmission Corporation (CNG). It is stated that the pipeline facilities would constitute an "operational loop" on CNG's pipeline system and are necessary to permit CNG to serve certain markets off its PL–1 Line, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and operate certain pipeline and compression facilities and replacement pipelines to increase its mainline transmission capacity between the Crayne Farm meter station, in Waynesburg County, Pennsylvania, and the Chambersburg Compressor Station in Chambersburg County, Pennsylvania. Texas Eastern proposes to provide an incremental 100,000 Dekatherms per day (Dth/d) of transportation capacity for CNG. Texas Eastern states that CNG proposes to utilize this capacity to render firm transportation service for CNG customers served off of CNG's PL–1 Line, including Virginia Natural Gas Company, Washington Gas & Light Company, and Public Service Company of North Carolina (CNG Customers). Texas Eastern proposes to charge a separately stated incremental rate, as an initial rate.

It is stated that CNG requires the 100,000 Dth/d of incremental capacity on Texas Eastern because the portion of the Texas Eastern system proposed herein to be expanded would function as a necessary operational loop of CNG's pipeline system connecting upstream transportation and/or storage services to CNG's PL–1 Line at Chambersburg, Pennsylvania. Specifically, it is stated that CNG has advised Texas Eastern that CNG proposes to render 100,000 Dth/d

of firm transportation and/or storage service for the CNG Customers.[3]

It is stated that CNG's system interconnects with Texas Eastern's system at the Crayne Farm meter station near Waynesburg, Pennsylvania. Texas Eastern states that its facilities from Crayne Farm to Chambersburg are fully subscribed for firm services. It is stated that the incremental facilities proposed herein will enable CNG to deliver 100,000 Dth/d into Texas Eastern's system at Crayne Farm for firm transportation to Chambersburg, where such volumes would be redelivered back to CNG at the point where Texas Eastern's system interconnects with CNG's PL–1 Line.

Therefore, Texas Eastern submits that the proposed incremental facilities provide CNG a necessary transportation link between its existing system facilities, and allows Texas Eastern to deliver 100,000 Dth/d to CNG at Chambersburg. Without the incremental transportation service, Texas Eastern states that CNG could not provide downstream service on the PL–1 Line for the CNG Customers. Texas Eastern adds that CNG has previously purchased similar transportation services to serve its Line PL–1 markets under Texas Eastern Rate Schedules X–135 and X–137, 64 FERC ¶ 61,303 (1993).

Specifically, Texas Eastern requests authorization to:

(1) Install, own and operate a 6,500 horsepower compressor addition at the existing Uniontown Compressor Station and a total of 12.95 miles of 36-inch looping in two separate segments within the state of Pennsylvania;

(2) Construct, install, own and operate 4.7 miles of 36-inch replacement pipeline between the existing Bedford and Chambersburg Compressor Stations; and 8.25 miles of 36-inch replacement pipeline between the existing Uniontown and Bedford Compressor Stations; and

(3) Charge, as a NGA section 7(c) initial rate, an incremental reservation rate for transportation service under Texas Eastern's Part 284 FT–1 Rate Schedule.

It is estimated that the total capital costs of the proposed compression and pipeline facilities extensions is $39,207,000. Based upon the cost of service of the proposed facility additions, Texas Eastern proposes to charge CNG an incremental rate of $7.581 per dekatherm.

[3] On, November 18, 1993, in Docket No. CP94–89–000, CNG filed a related application describing the services it proposes to render for the CNG Customers.

Comment date: December 14, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29346 Filed 11–30–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–98–000]

Arkla Energy Resources Co.; Request Under Blanket Authorization

November 24, 1993.

Take notice that on November 19, 1993, Arkla Energy Resources Company (AER), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–98–000, a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon certain facilities located in Louisiana, under AER's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER proposes to abandon, by retirement, two 2–inch U-shaped meters located on AER's Line S, in Caddo Parish, Louisiana. It is stated that the facilities were used by AER to deliver gas to Arkansas Louisiana Gas Company (ALG), so ALG could service the Blanchard Town Border Station #3, and the Countryaire Mobile Home Park. AER avers that the facilities proposed to be abandoned herein, were certificated in Docket No. CP85–77, and ALG has consented in writing to the abandonment and removal of AER's metering facilities. AER states that the taps will be abandoned in place and all above ground facilities will be removed. It is stated that the meter that serviced the Blanchard Town Border Station was installed in 1973, and has been inactive for years. It is further stated that the meter that serviced the Countryaire Mobile Home Park was installed in 1963, and AER stated that it has extended its existing distribution line to serve this customer so as to prevent disruption of service during normal maintenance of AER's Line S.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the

Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29344 Filed 11–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–97–000]

Williston Basin Interstate Pipeline Co.; Request Under Blanket Authorization

November 24, 1993.

Take notice that on November 19, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed a prior notice request with the Commission in Docket No. CP94–97–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to reassign natural gas volumes that it delivers to Northern States Power Company (NSP) under Williston Basin's blanket certificate issued in Docket No. CP83–1–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Williston Basin proposes to reassign natural gas volumes it delivers to NSP under its FERC Rate Schedule X–13. Williston Basin states that it would increase the daily deliveries at the Casselton Border Station delivery point in Cass County, North Dakota, from 1 Mcf to 85 Mcf. Williston Basin would also decrease the daily deliveries at the Mapleton Interconnect delivery point also in Cass County from 7,989 Mcf to 7,905 Mcf.

Williston Basin states that the proposed reassignment of NSP's Maximum Daily Delivery Quantities (MDDQ) is allowed by its FERC tariff and that the proposed MDDQ reassignment would have no impact on Williston Basin's peak day and annual deliveries. Finally, Williston Basin states that it has sufficient capacity to provide the deliveries to NSP without detriment or disadvantage to its existing customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29345 Filed 11–30–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4804–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 3, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of General Counsel

Title: Information Collection Requirements for Confidentiality Rules (EPA ICR No. 1665.01).

Abstract: This ICR is for existing information collection activities associated with the protection of confidential business information (CBI) that have not previously received an OMB control number. Since the EPA's confidentiality regulations were promulgated in 1976, at 40 CFR part 2, subpart B, the EPA has collected information relevant to CBI claims. The respondents providing CBI information to the EPA are potentially any non-Federal entity that has submitted a document asserting a confidentiality claim. The information will be used by the EPA to determine:

(1) What information is claimed as confidential;

(2) Whether the Agency should formally evaluate the confidentiality claims pursuant to 40 CFR 2.204 and 2.205; and

(3) Whether such information is in fact entitled to confidentiality under exemption 4 of FOIA.

Pursuant to 40 CFR 2.204(e), respondents are required to respond to EPA's requests to justify confidential treatment for information when it is requested under the Freedom of Information Act (FOIA), or when EPA must know whether this information is entitled to confidentiality. The response must include: (1) A written explanation that addresses specific information necessary to substantiate the CBI claim, and (2) a designated contact for inquiries and notices concerning confidentiality. EPA will review the written explanations received by respondents, and where appropriate, will formally determine the respondent's entitlement to confidentiality. The EPA will store and maintain this information on file.

Finally, to ensure that the terms of any EPA contract requiring protection of CBI are honored, EPA contractors must obtain a confidentiality agreement from each employee given access to CBI and should maintain this agreement on file for the life of the contract.

Burden Statement: Public reporting burden for this collection of information is estimated to average 9.4 hours per response including time for reading the EPA's request, gathering information and preparing and submitting the information. Public recordkeeping burden is estimated to average 1 hour per year to store and maintain records related to confidentiality agreements.

Respondents: Any individual, business, non-profit organizations, or State or local government asserting a CBI claim.

Estimated No. Of Respondents: 1008 reporters, 232 recordkeepers.

Estimated Responses per Respondent: 1.

Frequency of Collection: On occasion.

Estimated Total Annual Burden on Respondents: 9,703 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S.Environmental Protection Agency, Information Policy Branch 2136, 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: November 22, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–29412 Filed 11–30–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4808–6]

Science Advisory Board; Clean Air Scientific Advisory Committee; Notification of Public Advisory Committee Meeting; Open Meeting—December 16, 1993

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) will meet on Thursday, December 16, 1993, from 9:30 a.m. and ending no later than 6 p.m. at the Guest Quarters Suites Hotel, 2515 Meridian Parkway, Durham, NC 27713. The meeting is open to the public, however, seating will be on a first-come basis. The Committee will review the Ozone Human Exposure Analysis methodology that is part of the ongoing review of the ozone national ambient air quality standards (NAAQS). Copies of documents describing the exposure methodology that have been provided to the Committee may be obtained by contacting Thomas McCurdy of the EPA Staff at (919) 541–5658. Copies of these documents are not available from the Science Advisory Board.

For further information concerning the meeting, including a draft agenda, please contact Mr. Randall Bond, Designated Federal Official, or Mrs. Janice Cuevas, Program Analyst, Science Advisory Board (Mail Code 1400), US Environmental Protection Agency, Washington, DC 20460. Phone: 202–260–8414; Fax: 202–260–1889. Individuals or groups wishing to make a brief oral presentation to the Committee must contact Mr. Bond no later than 12 noon Eastern Time on Friday, December 10, 1993 in order to reserve time on the agenda. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to the meeting date, may be mailed to the Committee prior to its meeting; comments received too close to the meeting date will normally be provided to the Committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: November 22, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–29413 Filed 11–30–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 83–1376; FCC 93J–2]

Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers Between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Federal Communications Commission.

ACTION: Final recommended decision.

SUMMARY: In this Final Recommended Decision the Alaska Federal-State Joint Board (Alaska Joint Board) adopts a final recommendation for the creation of a new market structure for the provision of interstate telecommunications service between Alaska and the contiguous states and between Alaska and Hawaii. The Alaska Joint Board concludes that this market structure represents the best balancing of the five objectives that the Alaska Joint Board has previously articulated: universal service, rate integration, revenue requirement neutrality, competition, and efficiency. Under the market structure recommended, AT&T would provide interstate message service and wide area telecommunications service between Alaska and the Lower 48, and Alaska and Hawaii, at integrated rates. Alascom could also provide interstate service independently after termination of the Joint Services Arrangement (JSA), between AT&T and Alascom, that currently governs Alaska interstate MTS. In addition, the Final Recommended Decision recommends that there be a four year transition to the new market structure in two phases. During the first phase, beginning March 1, 1994 AT&T, would continue to obtain services from Alascom under the JSA for one and one-half years. During the second phase, beginning September 1, 1995, the JSA would terminate and AT&T would be required to purchase a fixed amount of service from Alascom for two and one-half years. During the second phase Alascom's Common Carrier Services would be offered to carrier customers under tariff. The Final Recommended Decision also recommends that AT&T pay a $150 million transition payment to Alascom to reduce Alascom's total plant accounts.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson or Rose Crellin, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–1302, (202) 632–1292.

SUPPLEMENTARY INFORMATION:

Final Recommended Decision

Adopted: October 26, 1993.
Released: October 29, 1993.

By the Federal-State Joint Board:

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I. Introduction

1. In this Final Recommended Decision we present a carefully integrated plan to accomplish the objectives, required of this Joint Board, for interstate telecommunications services between Alaska and the contiguous states ("Lower 48") and between Alaska and Hawaii. We believe that this recommendation achieves, and represents the best balancing of, the five objectives guiding resolution of this proceeding: preservation of universal service; continuation of rate integration; maintenance of revenue requirement neutrality; allowance of market-based competitive entry; and the encouragement of increased efficiency. Our recommendation is comprised of carefully balanced elements that are intended to be implemented as a whole. Elimination or significant modification of any one aspect of our overall recommendation could adversely impact achievement of our market structure objectives.

II. Executive Summary

2. The Alaska market structure has been under review by this Joint Board for over eight years. After collecting vast volumes of data, receiving extensive comments from interested parties, and reviewing numerous proposals on this subject, we have reached a final recommendation regarding the market structure for Alaska that we believe best balances our identified goals and advances the public interest.

3. We affirm the conclusion in the Tentative Recommendation 58 FR 31204, June 1, 1993 that the Joint Service Arrangement ("JSA") should be terminated, subject to the adoption and implementation of suitable transition mechanisms.[1] We decline to recommend the market structure plans advanced by either Alascom or AT&T, but, instead, recommend an alternative market structure based on that set forth in the Tentative Recommendation.

4. Under our recommended market structure, American Telephone & Telegraph Co. ("AT&T") would provide interstate message telephone service and wide area telecommunications service (hereinafter collectively referred to as MTS) between Alaska and the Lower 48 (northbound and southbound) at integrated rates and under the terms and conditions applicable to AT&T's provision of services in the Lower 48. AT&T would also be obligated to furnish MTS between Alaska and Hawaii at integrated rates.

5. After the JSA is terminated, Alascom could offer interstate MTS independently from AT&T under its own tariff and with no obligation to charge AT&T's integrated rates.

6. Services provided to interexchange carriers ("IXCs") by Alascom, Inc. ("Alascom") under tariff would be offered on a non-discriminatory basis at rates that reflect the costs of service. Alascom's tariff would have separate rate schedules for its operations in locations subject to facilities competition and in locations where Alascom has a facilities monopoly. The costs of service in each of these categories would be prepared pursuant to a cost allocation plan developed by Alascom and approved by the Commission.

7. Alascom would continue to provide interstate private line service upon reasonable request under its existing federal tariffing and Section 214 obligations. If AT&T elects to provide interstate private line service to or from Alaska, it would be required to do so under the same rate structures, terms, and conditions that apply to its provision of private line services between other states.

8. The final recommendation would maintain the current cost separations factor for the circuit equipment of Alascom and United Utilities, Inc. ("UUI"). Therefore, the Alaska Fund originally proposed in the Tentative Recommendation, would not be required.

9. During a four year transition period, beginning March 1, 1994, AT&T would be required to purchase services from Alascom to meet its MTS obligations. There would be two phases to the transition period with the first phase beginning on March 1, 1994, and the second phase beginning on September 1, 1995. During the first phase, AT&T would continue to obtain services from Alascom under the JSA that currently governs Alaska interstate MTS for one and one-half years. As of September 1, 1995, the JSA would terminate and Alascom's Common Carrier Services would be offered to carrier customers under tariff. During the second phase of the transition period, lasting two and one-half years, AT&T would be required to purchase a fixed amount of service from Alascom, defined as a percentage of a baseline revenue level. This obligation would decline to zero at the end of the second phase.

10. Finally, we recommend a $150 million transition payment (to be made by AT&T in two installments of $75 million each) be applied to reduce Alascom's total plant accounts. We conclude that this is necessary to ensure universal service, and to ensure revenue requirement neutrality.

III. Background

A. Rate Integration

11. In the early 1970's, the Commission authorized the private ownership and operation of domestic satellite and earth station facilities and concluded that the distance insensitive nature of satellite transmission costs required rate integration for services between the Lower 48 and certain noncontiguous points that included Alaska.[2] Rate integration for Alaska was accomplished in several steps that included the execution of the JSA between AT&T and Alascom in 1980.[3] In the JSA, Alascom and AT&T entered into a contract to provide MTS services

[1] Tentative Recommendation And Order Inviting Comments, CC Docket No. 83–1376, 8 FCC Rcd 3684, 3687 (1993) ("Tentative Recommendation").

[2] "Rate integration" is the Commission policy that was adopted to describe service between the contiguous states and Alasks, Hawaii, Puerto Rico, and the Virgin Islands (noncontiguous points) at rates that are equivalent to those prevailing for comparable distances in the contiguous 48 states. Establishment of Domestic Communications Satellite Facilities, 35 FCC 2d 844, 856–57 (Domsat II), *aff'd on recon.*, 38 FCC 2d 665 (1972), *aff'd sub nom. Network Project* v. *FCC*, 511 F.2d 786 (DC Cir. 1975). See also Integration of Rates and Services, 61 FCC 2d 380 (1976), recon. in part, 65 FCC 2d 324 (1977) (extending rate integration policy to the Virgin Islands).

[3] The JSA was accepted and approved by the Commission in 1981. Memorandum Opinion and Order in W–P–C 649 et al., 87 FCC 2d 25 (1981). "The Commission has indicated its full support for the intercarrier settlement agreement submitted to the Federal-State Joint Board and the Commission to resolve separations questions for Alaska and Hawaii." FCC News Release, May 8, 1981, Report No. 16363. The FCC accepted the Joint Board's recommendation in a Report and Order, FCC 81–312, July 8, 1981, without qualification of the JSA as an "interim" measure. The Joint Board recommended adoption of the Motion of the AT&T and Alascom regarding the JSA as filed. Confusion has arisen because the JSA included an "interim settlements procedure" to provide for the transitional supplement which would "terminate on January 1, 1985 at which time full rate integration will take place." See 87 FCC 2d at 20–1.

jointly, with Alascom responsible for MTS carriage to, from, and within Alaska, and AT&T responsible for carriage in the Lower 48. AT&T received all MTS revenues and paid all MTS costs of service, including those of Alascom.[4] The JSA also required that the Lower 48 Separations Manual would be applied to Alascom and that Alascom would receive annual, declining transitional supplement payments from AT&T during the transition to full rate integration.[5]

12. Several issues arose regarding the long-term relationship between the rate integration and competitive policies for MTS services between the noncontiguous points and the Lower 48. On December 22, 1983, in response to a petition for rulemaking filed by the State of Alaska and the Alaska Public Utilities Commission ("APUC"), the Commission adopted a Notice of Inquiry ("NOI").[6] Comments in response to the NOI raised significant issues that required further analysis. On September 27, 1985, the Commission issued a Notice of Proposed Rulemaking ("NPRM") in CC Docket No. 83–1376 and referred those issues to this Joint Board pursuant to Section 410(c) of the Communications Act.[7] In particular, this Joint Board was asked to consider questions concerning the appropriate market structure for the provision of Alaska MTS to harmonize the Commission's rate integration and competition policies and to recommend any separations changes that might be required to implement that market structure.

B. Joint Board Actions (1986 to 1922)

13. During the course of investigating the issues designated by the Commission, this Joint Board, on numerous occasions, solicited comments, data, and proposals regardng the Alaska interstate market structure. On May 9, 1986, we issued a data request on the costs of Alaska's interstate and intrastate telecommunications services, including a detailed description of then existing market and service arrangements, Alaskan demographic and economic data, and local exchange and interexchange carriers' financial, facilities, and statistical data (historical and projected). The order also asked commenters to address the question of the high cost of Alaska services and to submit market structure proposals.[8] The comments and data filed in response to this order, as well as other documents submitted and issues raised relating to the market structure, were evaluated by the Joint Board.

14. As a result of this analysis the Joint Board issued a Supplemental Order on January 3, 1989.[9] The Supplemental Order identified the following five objectives to guide resolution of the issues in this proceeding: Continuation of rate integration; preservation of universal service; maintenance of jurisdictional revenue requirement neutrality; allowance for market-based competitive entry; and encouragement of increased efficiency. Two alternative conceptual market structure options, Plans A and B, were also identified by this order.

15. The Supplemental Order solicited comments on the objectives and the plans and also identified additional, updated data that were to be provided. Commenters were generally supportive of the Joint Board's objectives and were critical of one or both of the proposed plans. Alternative plans were also filed in response to Plans A and B: Alascom filed its Alaska Revenue Cap ("ARC") Plan; AT&T filed a modified Plan B; and the State of Alaska filed its "Cost Plus Incentive Fee Plan."[10]

16. During July 1991, AT&T and Alascom informed the members of the Joint Board that they were in the process of finalizing an agreement to replace the JSA and to resolve outstanding issues.[11] On January 29, 1992, a Joint Petition was filed by AT&T, Alascom, Pacific Telecom Inc., ("PTI"), and Telephone Utilities of Alaska, Inc. ("TUA") seeking approval of a Master Agreement ("MA") for the provision of Alaska telecommunications services. On March 4, 1992, the Joint Board issued a Public Notice requesting comments and reply comments on the MA.[12] Pleadings were also invited on a petition by GCI, filed on January 29, 1992, that requested a new proceeding to resolve Alaska market structure issues.

17. In addition to comments and reply comments, the Joint Board received data concerning the MA through responses made to five data requests released between October 4, 1991, and June 25, 1992, by the State Members of the Joint Board. Overland Consulting, Inc. ("Overland"), a consultant hired to assist the Alaska Member of the Joint Board and staff, submitted a Briefing Paper on the MA on July 21, 1992.

18. On August 4, 1992, the State Members of the Joint Board issued a Memorandum of Understanding ("MOU") setting forth their concerns with the MA in light of the objectives set forth in the Supplemental Order. In response to the MOU, Alascom, AT&T, GCI, and the State of Alaska each offered modifications or alternatives to the MA. After studying the comments, pleadings, and proposals received in response to the MOU, the State Members, on November 5, 1992, released a document entitled: "Memorandum of Principles—Alaska Market Structure" ("The State Members' Plan"). The State Members' Plan identified those elements of the MA

[4] To implement the rate integration policy, AT&T develops its MTS rates for the total market and files tariffs covering the northbound service offerings to Alaska. Alascom mirrors the AT&T rates and files tariffs covering the southbound service offerings from Alaska. See Integration of Rates and Services, 2 FCC Rcd. 2447 (1987), *aff'd sub nom. General Communication, Inc. ("GCI")* v. *FCC*, No. 87–1112 (DC Cir. 1987).

[5] Memorandum Opinion and Order in W–P–C 649 et al., 87 FCC 2d 25, 28–29 (1981). Originally, Alaska rate integration was to be achieved by 1985, but in 1984 the Commission extended the final implementation date for rate integration and continued the JSA and the transitional supplement payments at 1984 levels. Full rate integration became effective January 1, 1987, at which time AT&T's supplemental payments to Alascom terminated. Memorandum Opinion and Order, CC Docket No. 83–1376, RM 4436, FCC 86–602 (released January 2, 1987).

[6] Notice of Inquiry, Integration of Rates and Services, CC Docket No. 83–1376, RM 4436, 96 FCC 2d 567 (1984), 49 FR 1538, January 12, 1984.

[7] Notice of Proposed Rulemaking, CC Docket No. 83–1376, RM 4436, FCC 85–520, 50 FR 41714, October 15, 1985 (released September 27, 1985) at para. 14. That Notice also terminated the inquiry with respect to non-contiguous points other than Alaska (*i.e.*, Hawaii, Puerto Rico, and the Virgin Islands), finding that the comments did not raise any issues concerning the compatibility of rate integration and competition for service to and from those points.

[8] Order Requesting Data and Inviting Comments, CC Docket No. 83–1376, RM 4436, FCC 86J–2, 51 FR 17756, May 15, 1986 (released May 9, 1986); filing dates amended by Memorandum Opinion and Order, CC Docket No. 83–1376, (released August 20, 1986), 51 FR 31149, September 2, 1986. On July 15, 1986, data were filed by Alascom, Alaska Telephone Association ("ATA"), AT&T, GCI, and the State of Alaska. Market structure proposals for Alaska and/or comments were filed by interested parties on December 2, 1986. Opposition comments and reply comments were filed on February 27 and March 27, 1987, respectively.

[9] Supplemental Order Inviting Comments, CC Docket No. 83–1376, RM 4436 4 FCC Rcd 395 (1989), 54 FR 7471 February 21, 1989.

[10] Comments and or data were filed by Alascom, AT&T, GCI, the Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO"), the State of Alaska, the State of Hawaii ("Hawaii"), the United States Telephone Association ("USTA"), and UUI between February 27, 1989, and April 13, 1989. Reply Comments were filed by Alascom, ATA, AT&T, GCI, Hawaii, National Exchange Carrier Association, Inc. ("NECA"), the State of Alaska, and UUI between May 5 and May 15, 1989.

[11] Pacific Telecom, Inc. Press Release (July 10, 1991).

[12] Comments were filed by Alascom, ATA, AT&T, Anchorage Telephone Utility ("ATU"), GCI, Hawaii, MCI Telecommunications Corporation ("MCI"), NECA, and Sprint Communications Company L. P. ("Sprint"), the State of Alaska, and UUI between April 16, 1992 and April 20, 1992. Reply Comments were filed by Alascom, ATA, AT&T, GCI, Hawaii, MCI, OPASTCO, and the State of Alaska on May 20, 1992.

which they believed were not in the best interest of the public and recommend an alternative market structure.

19. On December 2, 1992, a Public Notice was issued inviting comments on the State Members' Plan.[13] In early 1993, we were notified by AT&T that the parties had elected not to extend the MA and would allow the agreement to expire after January 15, 1993. As a consequence, the MA became moot.[14]

C. Recent Procedural History (1993)

20. On March 21, 1993, AT&T petitioned for termination of the JSA and proposed an alternative Alaska market structure named the Consumer Benefit Plan ("CBP").[15] On May 17, 1993, the Joint Board released the Tentative Recommendation.[16] The Tentative Recommendation proposed a new market structure for Alaska interstate telecommunications services based on the extensive record that had been developed in this proceeding. The Tentative Recommendation required Alascom and AT&T to file plans to implement the Joint Board's recommendations. The Tentative Recommendation also invited comments and reply comments on its market structure proposal, the CBP filed by AT&T,[17] and the requested implementation plans.

21. Both the Alascom and the AT&T responses to the requirement for implementation plan(s) were filed on June 7, 1993.[18] Alascom's implementation plan included data regarding the estimated effects of the Tentative Recommendation market structure proposal at varying levels of accelerated cost recovery and its preliminary comments regarding the Tentative Recommendation. AT&T's filing did not present an implementation plan but, instead, argued that the Tentative Recommendation was inadequate and inferior to the CBP.

22. In response to the Tentative Recommendation, numerous entities filed comments, reply comments, and motions.[19] In addition, a public hearing was convened on July 1, 1993, in Anchorage, Alaska, to receive testimony from the citizens of Alaska and other interested persons on the Tentative Recommendation, the CBP, and the implementation plan filings of Alascom and AT&T.[20]

All Members of the Joint Board participated in person or via audio or video teleconference.[21] Also on July 9, 1993, Alascom was requested by the State Members of the Joint Board to provide the underlying data supporting the financial analyses presented in its implementation plan.[22]

23. The record in this proceeding also includes the taped record and a transcript of a hearing convened in Anchorage, Alaska, on August 27, 1993, by members of the Alaska State Legislature's Telecommunications Task Force. The hearing provided an opportunity for a technical briefing and comment on the proposals currently pending before the Joint Board.[23]

[13] Comments on the State Members' Plan were submitted by Alascom, APUC, ATA, AT&T, GCI, MCI, the State of Alaska, and UUI on December 18, 1992. Reply Comments were filed by Alascom, ATA, AT&T, GCI and the State of Alaska on January 15, 1993.

[14] On September 18, 1992, Charles Naftalin submitted an *ex parte* filing indicating that TUA had also filed a Notice of Withdrawal of its companion application pending before the APUC in APUC Docket U–92–9.

[15] AT&T's Petition to Terminate the Joint Service Arrangement, March 31, 1993.

[16] Tentative Recommendation, 8 FCC Rcd 3684 (1993).

[17] Alascom had previously filed on April 15, 1993, its opposition to the AT&T proposal in its Initial Response of Alascom, Inc. to AT&T's Petition to Terminate the Joint Service Arrangement.

[18] Response to Request for Implementation Plan of Alascom, Inc. (June 7, 1991); AT&T's Response to Request for an Implementation Plan (June 7, 1993).

[19] Comments dated June 23–28, 1993 were filed by Alascom, ATA, AT&T, ATU, GCI, Hawaii, MCI, NECA, Southwestern Bell Telephone Company ("SWBT"), Sprint, the State of Alaska, and UUI. Reply comments were filed by Alascom, ATA, AT&T, GCI, Hawaii, MCI, Sprint, the State of Alaska, USTA, and UUI between July 9 and 12, 1993. During June, July, and August numerous letters were filed by members of the public regarding the Alaska market structure issues. Motions made in this proceeding include Alascom's Request for Supplementation of Record (June 15, 1993); Motion of Alascom, Inc. (regarding Mr. Pitsch *ex parte* filing), (July 16, 1993); and AT&T's Reply to Motion to Alascom (July 22, 1993).

[20] Representatives of Alascom, the Alaska Federation of Natives, Inc., Anchorage Community Access TV, Inc., AT&T, the City of Anchorage, Cook Inlet Region, Inc., GCI, Teamsters Local 959, as well as other members of the public provided testimony.

[21] An order released on July 9, 1993, provided an opportunity for interested parties to file written responses to the public hearing testimony in order to assure a complete record. Order, CC Docket No. 83–1376, DA 93–825 (released July 9, 1993). This Order was in part a response to a Motion of Alascom, Inc. to Schedule Reply Comments filed on June 28, 1993. Alascom's Motion was opposed by GCI on June 29, 1993. Alascom filed its reply to GCI's opposition on June 20, 1993. Alascom, AT&T, GCI, and numerous members of the public filed comments in response to the July 9, 1993, Order.

[22] Letters regarding Data Request 6 and Data Request 7, from Lorraine Kenyon, Joint Board Staff, to Vernon Dunham, PTI dated July 9, 1993. A letter by Alascom in response to Requests 6 and 7 was received on July 14, 1993. Data Request 7 was withdrawn on July 19, 1993, after further consideration by the State Members of the Joint Board. Alascom filed Data Request 6 on July 23, 1993.

[23] Commissioner Susan Knowles and staff member Lorraine Kenyon briefed the Telecommunications Task Force on the history of CC Docket 83–1376 and on the Tentative Recommendation

Alascom, ATA, AT&T, GCI, MCI, and the State of Alaska participated in that hearing.

IV. Market Structure

A. Joint Service Arrangement

1. Introduction

24. The JSA was signed before widespread interexchange competition had developed throughout the United States, and was based upon the pre-divestiture, pre-access charge settlement model that was then applied to independent telephone companies. As implemented, the JSA obligated AT&T to pay all of Alascom's interstate MTS related costs on the same pre-divestiture basis that applied to independent telephone companies including the earned rate of return on interstate investment.[24] Although the exact amount has been subject to dispute, AT&T's current costs of meeting its obligations to provide rate integrated MTS service through the JSA exceed the MTS and WATS revenue that AT&T receives from servicing the Alaska market by a significant amount.[25]

25. In the Tentative Recommendation, we initially concluded "that the public interest would be better served by terminating the JSA and thereby restructuring the interstate telecommunications market in Alaska to promote competition, open entry, and improve efficiency incentives."[26] We also recognized, however, that an immediate termination of the JSA "could harm carriers and adversely impact the public by accomplishing the goals of competition and efficiency at the expense of the goals of universal service and revenue requirement neutrality."[27] Therefore, we proposed several transition mechanisms to accompany a phase-out of the JSA and requested comments on our plan.

2. Comments

26. In response to the Tentative Recommendation, Alascom recommended that the Joint Board continue the existing market structure

[24] See generally, Joint Petition To Approve Master Agreement, Terminate Joint Service Arrangement, Continue NECA Participation, And For Limited Waiver Of Separations Rules And Resolution And Termination of Regulatory Proceedings, Attachment B at 4 (filed in CC Docket No. 83–1376 and RM 4436 by AT&T, Alascom, PTI, TUA on January 29, 1992).

[25] *E.g.*, AT&T currently estimates that its obligation under the agreement exceeds the revenues that it receives under the agreement by approximately $80 million. *Ex parte* letter, A.L. Tyree, AT&T to William F. Caton, FCC, Acting Secretary, FCC (September 18, 1993).

[26] Tentative Recommendation, 8 FCC Rcd at 3687, para. 27.

[27] *Id.*

and JSA, possibly under its previous ARC plan, modified by adoption of an accelerated cost recovery mechanism. AT&T continued to advance its CBP as the best solution to meet the five objectives identified in the Supplemental Order. Comments from other parties were generally supportive of the Tentative Recommendation, although some parties suggested changes in one of or more of the basic elements. The only full support given the ARC Plan and CBP came from their respective sponsors.

3. Discussion

27. We have concluded that, in the current environment, the JSA is not a viable long term market structure and that it should be terminated pursuant to the transition plan described below.[28] We have reached this conclusion after carefully considering the extensive record that has been compiled in this proceeding in the context of our understanding of the competitive forces that operate in the Alaska MTS market and the costs of providing telecommunications services within, to, and from, the Alaska market.

28. As observed in the Tentative Recommendation, conditions have changed since the JSA was crafted and approved by the Commission on an interim basis. The JSA is no longer compatible with the development of a competitive, multi-carrier, interexchange market that serves Alaska. For example, the JSA tends to function as a "requirement contract," in which AT&T is required to satisfy all of its MTS service needs through the JSA. Such an arrangement does not facilitate the sale of Alascom services to other interexchange carriers or the purchase of services by AT&T from other carriers.

29. In addition, the JSA does not allow AT&T the same freedom that its competitors enjoy to build or lease facilities to serve Alaska; and the JSA does little to encourage efficiency since Alascom is guaranteed a customer base. As a consequence, we recommend that the FCC terminate the JSA as soon as reasonably possible, subject to the implementation of transition mechanisms that we identify in the order. Our recommendation will ensure that the five objectives guiding development of a revised interstate market structure for Alaska will not be compromised given termination of the JSA. The resulting plan will better serve the public interest than the JSA or any other plan proposed, or considered by, this Joint Board during the course of this extended proceeding.

B. ARC Plan: Retention of the Joint Service Arrangement

1. Introduction

30. The ARC Plan was first introduced by Alascom in its Comments filed April 13, 1989.[29] Alascom contends that its recommended market structure would continue the JSA but would incorporate amendments to resemble closely the price cap regulation of AT&T.[30] Under the ARC Plan, Alascom would develop a baseline revenue cap equal to the previous year's interstate MTS revenue requirements. The cap would be adjusted up or down by applying the same index that is applied to AT&T's capped rates. Thus, Alascom would receive more or less in payments from AT&T under the JSA according to the same productivity factor applied to AT&T and to the other factors in AT&T's index. Alascom would receive an increase or decrease to its cap based on 50% of the value of the annual increase or decrease is southbound traffic compared with the base year. The final adjustment to the previous year's revenue requirements would be to reduce those requirements by the total MTS payments made to Alascom by carriers other than AT&T.[31]

2. Comments

31. After the ARC Plan was proposed in April 1989, GCI and AT&T filed reply comments opposing the plan. It was criticized as insulating Alascom from competition and from incentives for economic efficiency; lacking an "automatic stabilizer" mechanism; failing to assign a portion of the Alaskan support burden to AT&T's competition; and grandfathering Alascom's costs which were perceived as being needlessly high.[32] GCI opposed Alascom retaining a portion of the profits associated with southbound traffic.[33] The State of Alaska likewise opposed Alascom retaining any southbound traffic profits and expressed concern that service quality could suffer due to disincentives to invest and the lack of service quality monitoring under the ARC Plan.[34] As the ARC Plan did not resurface until Alascom filed its Comments on July 12, 1993, there have been no further comments on it in this proceeding.

3. Discussion

32. Alascom is the only party supporting the ARC Plan. The ARC Plan rests on continuing the JSA, and we are not persuaded that the decision to terminate the JSA should be abandoned. We have evaluated the JSA in light of our five objectives and find that the goals of enhancing competition in the Alaska market and increasing incentives for efficiency have not been furthered under the JSA. Indeed, the point of continuing this proceeding has been to devise a market structure that will permit the most balanced and complete achievement of our five objectives that is possible. Continuing the JSA even under the provisions of the ARC Plan simply will not allow that to occur.[35] Accordingly, we reject Alascom's latest proposal to resurrect the ARC Plan inasmuch as it fails to advance the objectives of this proceeding. Instead, we recommend moving forward with the adoption of the market structure proposed in the Tentative Recommendation as modified herein.

C. Consumer Benefit Plan

1. Introduction

33. AT&T filed a Petition on March 31, 1993, requesting the immediate termination of the JSA and adoption of its CBP proposal to allow for the entry of AT&T as a fully competitive interstate and intrastate toll provider in the Alaska market. Concurrently, AT&T filed an Application for Section 214(a) authority to create and operate a network for interstate service to and from Alaska.[36]

34. Under the CBP, AT&T would: (1) Provide interstate MTS to and from Alaska at integrated rates; (2) eliminate its mileage bands 10 and 11, thus lowering rates for approximately 25% of the calls southbound from Alaska and 25% of the calls northbound to Alaska;[37] (3) offer Alaskan customers many of the AT&T services it claimed were not now available through Alascom; (4) build a new fiber optic submarine cable between Alaska and

[28] Most parties in this proceeding either currently or historically have advocated termination of the JSA. Tentative Recommendation, 8 FCC Rcd at 3687.

[29] Comments of Alascom, CC Docket No. 83-1376 (April 13, 1989).

[30] Price cap regulation is described in Policy and Rules Concerning Rates For Dominant Carriers, 4 FCC Rcd 2873 (1989), 54 FR 19836, May 8, 1989.

[31] A description of the ARC Plan may also be found in Comments of Alascom, Inc. (July 12, 1993) at Attachment 1.

[32] Reply Comments on AT&T (May 15, 1989) at 28; Reply Comments of GCI (May 15, 1989) at 16.

[33] Reply Comments of GCI (May 15, 1989) at 16.

[34] State of Alaska Reply Comments (May 15, 1989) at 19-20.

[35] Alascom has not demonstrated that the ARC Plan is sufficiently different from the JSA to promote our competition and efficiency goals, especially given that, under the ARC Plan, Alascom continues to be guaranteed that AT&T would be a customer for virtually all of its interstate MTS.

[36] Application of AT&T (March 31, 1993), File No. W-P-C-6861.

[37] AT&T's Petition (March 31, 1993) at 6-7.

the Lower 48; and (5) enter into the intrastate MTS market in Alaska at rates equal to, or lower than, the lowest current rates of GCI or Alascom with a pledge not to raise those rates for five years, except to pass through any local exchange carrier ("LEC") access charge increases approved by the APUC.[38] AT&T conditioned its pledge to implement the CBP upon the occurrence of three events: (1) Prompt termination of the JSA; (2) the granting of Section 214(a) authority; and (3) the issuance of an order directing Alascom to provide AT&T and other carriers with tariffed, cost-based services between their Alaskan points of presence ("POPs") and the networks of the Alaskan LECs.

2. Comments

35. In Alascom's Petition to Deny AT&T's Application[39] and in its Comments, Alascom asserted that the Application filed by AT&T was insufficient and contrary to the public interest.[40] Alascom stated that the CBP would duplicate facilities for no reasonable purpose and would result in an $80 million increase in cost without appreciably increasing revenues.[41] Alascom also contended that AT&T's arguments in support of the CBP where factually incorrect or contradicted by past filings.[42] Lastly, Alascom characterized AT&T's promise that, for a period of five years, it would charge intrastate rates that are lower than those of Alascom or GCI as "pricing without regard to cost" and destructive of the competitive marketplace.[43]

36. Other parties criticized the Application as lacking sufficient detail and key information necessary to analyze the plan.[44] ATU criticized the CBP as providing no assurance that it would not lead to increases in intrastate access rates.[45] The State of Alaska, while acknowledging the possibility that the CBP could be in the public interest on a theoretical basis, required more information "to determine whether AT&T's plan would result in a market structure that would make universal service achievable, rate integration sustainable, and jurisdictional cost shifts avoidable in both the short and long terms."[46] The CBP was also criticized by the State of Alaska as a not providing an orderly transition to a new market structure and not adequately recognizing the investment that Alascom had made in reliance on the JSA.[47] The State of Alaska questioned how AT&T would provide service to rural areas of Alaska if Alascom's existing services were not available, given that AT&T does not currently have a satellite that serves those areas.[48]

3. Discussion

37. AT&T asserts that its CBP "satisfies all of the Joint Board's previously stated objectives for an Alaska telecommunications structure" and that it will "benefit consumers more than any other plan offered during this proceeding."[49] On the surface, it does appear that AT&T is making a service commitment in the CBP that will continue integrated interstate MTS rates to Alaska (at even lower than current rates) and will introduce another competitor in the intrastate market at rates that are as low as, or lower than, those identified on the lowest currently available rate schedules, while at the same time bringing a wider array of services to Alaskans and newer, more reliable, technology to provide those services.

38. AT&T, however, has not provided sufficient information and data to permit us to find that AT&T's proposed CBP will satisfy the five objectives for a new market structure we have identified in this proceeding. In fact, no party of record, outside of AT&T, has stated that sufficiently detailed information exists to allow the Joint Board to adopt the CBP in its current form. Moreover, we are concerned that the plan does not contain any transition mechanisms or mechanisms to ensure that there will not be significant intrastate cost shifts when the JSA is terminated and AT&T provides service independently or to ensure that there will be no service disruptions or reductions in service quality while the market is reforming to adapt to the CBP structure. The CBP does nothing to enable Alascom to shift smoothly from the JSA to a new market structure, and during the transition to the new market structure it is essential that Alascom continue to provide service.

39. In conclusion, the CBP lacks sufficient detail to demonstrate that it satisfactorily achieves the five objectives of the Joint Board and fails to incorporate transition mechanisms essential to introduction of a new market structure in Alaska at this time. Thus, while there are attractive elements in the CBP, we cannot recommend its adoption. We do not believe that it is appropriate to further delay the resolution of this proceeding by calling for data to support the CBP's projection of future occurrences or by attempting to develop modifications to the CBP to ensure that it does not compromise our goals.

D. Recommended Market Structure

1. Introduction

40. As noted above, we have developed a revised Alaska market structure recommendation that is based on the Tentative Recommendation as modified by the results of our analysis of the comments, data, and concepts advanced by the parties. We believe that our recommendation reasonably balances the five objectives set forth in the Supplemental Order. In particular, the revised market structure we recommend is an improvement over the Tentative Recommendation in that it is simpler, provides greater assurance of revenue requirement neutrality, and at the same time produces a more rapid, yet controlled, transition to the new market structure. Therefore, we recommend that the Commission adopt our revised Alaska market structure plan. The following sections explain in detail the various aspects of our revised market structure recommendation, how it differs from the Tentative Recommendation, and why these changes and the overall arrangement serves the public interest.

2. Facilities Issues

a. Introduction. 41. Under the market structure set forth in the Tentative Recommendation, Alascom and AT&T could each build or lease facilities individually in order to provide their services, subject, of course, to acquiring all necessary authorizations. The construction of facilities and provision of services by Alascom and AT&T

[38] AT&T stated that it would offer intrastate services at rates 4% lower than Alascom's standard rates. AT&T's Comments (June 28, 1993) at 23.

[39] Petition to Deny of Alascom, Inc. (June 25, 1993) FCC File No. W–P–C–6861.

[40] Comments of Alascom (July 12, 1993) at 18.

[41] Alascom Implementation Plan (June 7, 1993) at 29; Comments of Alascom (July 12, 1993) at 19.

[42] Comments of Alascom (July 12, 1993) at 23–26, 27–31.

[43] Id. at 34–35.

[44] For example, ATA maintained that AT&T's CBP and Section 214 Application failed to include "the details necessary to fully analyze the Plan's impact on Alaska's ratepayers and telecommunications market structure." ATA Comments (June 25, 1993) at 8. ATU contended that AT&T's CBP proposal was incomplete and that AT&T's associated request for Section 214 authority should be denied. ATU Petition to Defer or Deny (June 25, 1993) at 3. UUI asserted that there was insufficient detail to ensure that ratepayers were not saddled with duplicative and unnecessary facilities (UUI Comments (June 23, 1993) at 10) and that the CBP was not in the public interest (UUI Reply Comments (July 12, 1993) at 2).

[45] Comments of ATU (June 28, 1993) at 3.

[46] Comments of the State of Alaska (June 28, 1993) at 8–10.

[47] Reply Comments of the State of Alaska (July 12, 1993) at 4.

[48] State of Alaska Comments (June 28, 1993) at 10.

[49] AT&T's Petition to Terminate Joint Services Arrangement (March 31, 1993) at 6.

would be governed by the same regulatory requirements applicable to dominant IXCs in the rest of the nation. The only exceptions are the current prohibition against construction of duplicate facilities in certain rural Alaska locations and the existing requirement that Alascom build facilities to allow provision of service to communities of 25 or more.[50]

b. Comments. 42. Few comments were filed on this aspect of the Tentative Recommendation except in regard to lifting the current prohibition against construction of duplicate earth stations in rural Alaska.[51]

c. Discussion. 43. We continue to support the position regarding facilities issues originally articulated in the Tentative Recommendation. No party strongly objects to that recommendation. No arguments have been raised to persuade us that a change in this facet of our recommended market structure is needed. Accordingly, we recommend, as we originally proposed, that AT&T and Alascom be free to build or lease their own facilities, subject to the requirements imposed generally outside Alaska on dominant IXCs and imposed on Alascom inside Alaska in the areas where Alascom has a facilities monopoly.[52]

3. Service Issues

a. Message Telephone Services/Wide Area Telecommunications Services. i. Introduction. 44. In the Tentative Recommendation we concluded that one or more carriers must be responsible for ensuring that interstate MTS is available at reasonable rates to all those requesting such service. We recommended that AT&T be responsible for providing Alaskan customers with interstate MTS at the same integrated rate levels and under the same terms and conditions available to other AT&T customers in the rest of the nation. This AT&T service requirement would apply to service between Alaska and the Lower 48 and between Alaska and Hawaii.

45. Under the Tentative Recommendation we also proposed that if Alascom chose not to provide interstate MTS under the new market structure, it must file under Section 214 of the Communications Act for authority to exit the market.[53] This filing also must include a plan for the smooth exit of Alascom from the MTS market to ensure that customers would not be faced with a service interruption.[54]

ii. Comments. 46. AT&T stated that it had no authority to provide southbound interstate services and that the provision under the Tentative Recommendation to require AT&T to obtain Section 214 authority to provide such service was unenforceable.[55] In Reply Comments, GCI observed that the Commission has the clear authority to enforce AT&T's longstanding obligation to provide rate integrated service to the Alaska market. GCI maintained that whether AT&T chooses to comply with this responsibility by filing a Section 214 application to construct its own facilities to serve Alaska or chooses to use the facilities of other carriers is of no consequence. GCI also noted that Section 214(d) confers authority on the Commission to require a carrier to provide service to a particular locality or region. Thus, the operative legal standard is AT&T's pre-existing service responsibility to Alaska.[56]

iii. Discussion. 47. We are not persuaded that we should significantly modify our position on MTS as identified in the Tentative Recommendation.

48. First, AT&T recognized and undertook the responsibility to provide both northbound and southbound interstate MTS at integrated rates to Alaska when it signed the JSA. If the southbound customers were not a responsibility of AT&T, then AT&T would not have signed a settlement agreement to arrange for their service nor would AT&T have agreed to cover all of the costs of those services.

49. Second, no party contends that AT&T does not have the obligation to provide rate integration both in Alaska and throughout the nation. AT&T's obligations under the Commission's rate integration policy apply regardless of the route of the call and the location of the caller; otherwise, the policy would be without effect. The Commission has adequate authority under Sections 201(a) and 4(i) of the Communications Act to enforce this policy,[57] without utilizing its authority under Section 214 of the act[58] and, in fact, has already required AT&T to provide service to southbound Alaska customers under the rate integration policy and through approval of the JSA. We see no public interest reason to reduce or otherwise limit AT&T's rate integration obligation to serve the Alaska market and, therefore, continue to support the provision of interstate MTS outlined in the Tentative Recommendation and further discussed in this recommended decision.[59]

50. In light of the dissolution of the JSA as an integral part of the Alaska market structure, AT&T must continue to fulfill its pre-existing service obligation to Alaska. Any reduction in AT&T's obligation to serve could well leave Alaskans without service or without the benefits of rate integration. Such a situation would not be in the public interest and would be contrary to our previously identified goals. We accordingly recommend that the Commission explicitly recognize AT&T's obligation under Section 201(a) of the Communications Act to provide MTS service to and from Alaska on a nation-wide rate integrated basis.

51. We recommend that the Commission require AT&T to amend its Section 214 application consistent with the requirements of this order. We recommend that AT&T be given the flexibility under the recommended market structure to choose whether to lease facilities from another carrier or to build its own facilities, subject to the current prohibition against construction of duplicate facilities in rural Alaska. If AT&T chooses to build facilities, then it will be required to file a Section 214 application under standard procedures.[60]

[50] In this Final Recommended Decision, we further clarify that in the case where no LEC facilities exist, Alascom may, on a case-by-case basis, be required to provide interconnection to locations that are functionally similar or equivalent to LEC end offices.

[51] This Final Recommended Decision does not address a lifting of that restriction.

[52] If a situation arose where customers in a community of 25 or more required interexchange service, but no facilities existed, Alascom would be required to build the facilities necessary to provide service or fully justify why such construction would not be in the public interest. The continuation under the Tentative Recommendation of this current obligation did not imply that Alascom was responsible for providing interstate MTS to those communities, but, rather, that it must make available and maintain the necessary facilities for IXCs desiring to provide MTS to gain access to customers in remote areas where duplicate facility construction is prohibited.

[53] The Tentative Recommendation also proposed that Alascom not be allowed to exit the market as long as the JSA was in effect.

[54] In addition, Alascom would be allowed to sell its customer list subsequent to the termination of the JSA, provided customers were properly notified of any change in carrier and subject to approval of Section 214 authority to exit the market.

[55] AT&T Comments (June 28, 1993) at 10–13.

[56] GCI Reply Comments (July 12, 1993) at 2–4.

[57] In pertinent part, Section 201(a) states: "it shall be the duty of every common carrier * * * in cases where the Commission * * * finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes." 47 U.S.C. 201(a).

[58] 47 U.S.C. 214.

[59] The public interest requires that AT&T continue to provide MTS at rate integrated levels to and from Alaska and between Alaska and Hawaii under the same terms, conditions, and rates as apply to provision of MTS elsewhere in the nation.

[60] AT&T must comply with all Section 214 requirements and has not requested any waiver of

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52. Finally, we continue to recommend that, in order to prevent abandonment of service to Alaskan customers under the new market structure and for the reasons set forth in the Tentative Recommendation, Alascom must file a transition plan and file for permission under Section 214 of the Communications Act prior to exiting the MTS market, if it chooses to exit that market.

b. Alascom Common Carrier Services.

i. Introduction. 53. The Tentative Recommendation recommended that upon termination of the JSA Alascom provide to IXCs all interstate transport and switching services ("Common Carrier Services") needed to complete the long distance services of IXCs up to the Alascom point of interconnection with each Alaskan local carrier.[61] It was proposed that Alascom's Common Carrier Services would be provided by tariff on a non-discriminatory basis, with rates averaged statewide. The requirement to average geographically Alascom's Common Carrier Service rates was intended to assure that the costs associated with serving areas of the State where facilities competition is permitted were not assigned to the rural areas of the state where Alascom has a facilities monopoly.[62]

ii. Comments. 54. The commenters focused on the conclusion in the Tentative Recommendation that Alascom's Common Carrier Service rates should be averaged statewide. Both GCI and MCI supported this conclusion stating that deaveraging Common Carrier Service rates was unjustified and would allow Alascom to assign excessive costs to services provided in those areas of the state were it had a facilities monopoly.[63] The Commission's tariff review process alone, without rate averaging, was not deemed sufficient by these parties to protect against the potential abuses of cross-subsidization. GCI further argued that rate averaging would protect rural customers and would reduce incentives for IXCs to deaverage their end-users rates or restrict service on rural routes.

55. In contrast, Alascom, AT&T, the State of Alaska, and UUI all either opposed a requirement that the Common Carrier Service rates be averaged, or raised concerns. It was argued that geographic averaging of the rates would encourage AT&T to abandon Alascom's facilities.[64] Alascom contented that under this provision of the Tentative Recommendation GCI would gain competitive advantage because it was not obligated to average geographically its switching and transport service rates or to serve the high-cost rural areas of the state.[65]

56. The State of Alaska also proposed the elimination of the geographic averaging requirement, claiming that costs of service were not equal statewide and imbalances between the average rates and the cost of service would likely lead to decreased traffic on the Alscom system, reduced efficiency, and upward pressure on intrastate rates.[66] It further argued that averaging was not needed since the trafficking process would ensure that rates were properly set. Sprint opposed statewide geographic rate averaging, claiming that such a policy was not justified.[67]

57. AT&T suggested that creating a separate study area for Alascom's services to Bush locations was preferable to statewide averaging of the Common Carrier Service rates.[68] The State of Alaska stated that the separate study area concept had merit, while UUI opposed the concept as unworkable, stating that it would be difficult for Alascom to generate sufficient revenues to support its network infrastructure.[69]

iii. Discussion. 58. The provision of service in the Alaska market is unique. The satellite equipment necessary to provide communications to and from remote areas of the state has historically been high cost, and, as a consequence, there appears to be a large service cost disparity between the Bush and non-Bush areas of Alaska. For example, Alascom's intrastate dedicated transport rates for rural wholesale services are almost ten times hither than those for wholesale services.[70] Alascom has also claimed in this proceeding that its Bush costs are $.406 per minute while non-Bush costs are only $.106 per minute.[71] Alascom attributes the high cost per minute in Bush locations in part to the low traffic volumes associated with those locations.[72] Given the relationship between costs and traffic volumes (channels), it would be reasonable to assume that the low volume rural locations in Alaska would tend to have a higher cost of service than the high volume centers. After reviewing the record in this proceeding, we are persuaded that a significant disparity in the cost of service between the non-Bush and Bush areas of Alaska is highly likely.[73]

59. We further note that Alaska will be moving from a market structure where Alascom is isolated from the full effects of competition, since it had a guaranteed customer (AT&T), to a market where Alascom will become one of the multiple carriers that will compete on essentially equally footing. For instance, Alascom's principal competitor to date, GCI, has built extensive facilities throughout large portions of Alaska and is well positioned to compete in the Alaska common carrier service market.

60. Given the expected high cost disparities within the Alaska market and the expected level of IXC competition, we must carefully evaluate whether Alascom's Common Carrier Service rates should be averaged statewide. With the exception of GCI and MCI, most commenters in this proceeding oppose statewide rate averaging for Alascom's Common Carrier Services. On balance, we are persuaded by the arguments of Alascom, AT&T, the State of Alaska, and UUI that a mandatory statewide averaged rate structure will require Alascom to price its services above cost in non-Bush areas and thus provide an artificial incentive for AT&T and other IXCs not to use Alascom's non-Bush network, even in cases where Alascom's underlying costs may be lower than those of its competitors. It is not our intent to

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these provisions. AT&T would be required to make its facilities available to other carriers under tariff.

[61] Tentative Recommendation, 8 FCC Rcd at 3688, para. 33.

[62] These areas are hereinafter referred to as non-Bush and Bush respectively. See Earth Stations re Tentative Decision to Establish Joint Ownership, 92 FCC 2d 736 (1982); Policies Governing the Ownership of Domestic Satellite Earth Stations in the Bush Communities in Alaska, CC Docket 80–254, RM–3304, 96 FCC 2d 522, 541 (1984) at para. 40.

[63] GCI Comments (June 28, 1993) at 6; GCI Reply Comments (July 12, 1993) at 6–8; MCI Reply Comments (July 12, 1993) at 1–2.

[64] Alascom Implementation Plan (June 7, 1993) at 20; UUI Comments (June 23, 1993) at 4; AT&T Reply Comments (July 12, 1993) at 8; State of Alaska Comments (June 28, 1993) at 7; State of Alaska Reply Comments (July 12, 1993) at 3.

[65] Alascom Implementation Plan (June 7, 1993) at 21; Alascom Comments (July 12, 1993) at 15–17.

[66] State of Alsaka Comments (June 28, 1993) at 7; State of Alaska Reply Comments (July 12, 1993) at 3.

[67] Sprint Comments (June 28, 1993) at 4–5.

[68] AT&T Comments (June 28, 1993) at 30.

[69] State of Alaska Reply Comments (July 12, 1993) at 3, n. 1; UUI Reply Comments (July 12, 1993) at 5.

[70] Alascom's intrastate wholesale services are services purchased by carrier customers for resale. APUC Alascom Tariff No. 98, 1st Revised Page 368.

[71] Alascom Comments (July 12, 1993) at 50.

[72] *Id.* 48–52.

[73] Our final recommendation includes a provision that Alascom file a Cost Allocation Plan ("CAP") with the Commission. We expect that the conclusions reached in this order regarding the cost disparity between non-Bush and Bush Common Carrier Services will be supported by the cost study that Alascom will be required to prepare. If after analysis, however, the cost study does not reflect that disparity, then the tariff for Alascom's Common Carrier services can be modified to reflect that fact.

handicap Alascom in the interexchange market. We are also concerned that our objective of revenue requirement neutrality will not be achieved if the Commission implements a mechanism (rate averaging) that most parties state would probably result in a shift in costs to the state jurisdiction as a result of lost interstate traffic.

61. We have also concluded that the advocates of statewide rate averaging have not demonstrated that deaveraging common carrier service rates will clearly lead to reduction in service availability or end use rate deaveraging. Our recommendation obligates the provision of interstate service statewide. Nor has the Commission given any indication that it would consider abandoning rate integration based on regional differences in the component costs of service. In conclusion, we are persuaded that allowing Alascom to file Common Carrier Service tariffs for two geographic rate zones will not lead to deaveraging of end user rates or to reducing the availability of service on facilities monopoly routes.[74]

62. While we remain concerned that the potential exists for Alascom to assign costs from its facilities competitive areas to its monopoly areas, we believe that potential cross-subsidization can be addressed without requiring statewide rate averaging. Accordingly, we recommend that Alascom be required to establish certain accounting safeguards to address the potential for cross subsidization. Those accounting safeguards should take the form of a CAP that would be filed with, and approved by, the Commission.

63. We believe that the Computer III Remand Order contains accounting safeguards that will serve as a useful starting point for the development of a CAP.[75] Recognizing that Alascom is a monopoly provider of service to the Bush areas of Alaska, its unique position raises the question of potential discrimination or cross subsidization. For this reason, the cost accounting requirement for Alascom is based on the cost accounting rules contained in the Computer III proceedings adapted to apply to Alascom's provision of service in the Bush areas. Alascom's submission must describe the accounting and cost allocation procedures that will be implemented to eliminate cross-subsidization.

64. The Alascom CAP shall be designed to segregate and identify separately, the cost, revenues, and investment for Alascom's monopoly Bush area operations, as distinct from those for its competitive, non-Bush operations. We recommend that the Commission require Alascom to divide its costs into three groups: those incurred solely to provide Bush service, those incurred solely to provide non-Bush service and those incurred to provide service to both the Bush and non-Bush areas.[76] The latter costs are referred to as joint and common costs. Further, we recommend that the Commission require Alascom to define its cost categories, to explain its procedures for assigning costs to those categories; and finally, for joint and common costs, to define its procedures for apportioning costs between the Bush and non-Bush areas. We recommend that the Commission closely examine Alascom's procedures for apportioning the operating lease expenses associated with the Aurora II satellite and Alascom's affiliated interest transactions.

65. We recommend that Alascom be required to file its CAP, including the categorization and allocation methodology described above, within three months of the release of a Commission Order adopting this recommendation.[77]

66. Given the above, we recommend that the provision in the Tentative Recommendation requiring that Alascom's Common Carrier Service rates be averaged statewide be eliminated. We conclude instead that division of Alascom's operations into two major geographic rate zone cost categories as defined through a CAP be adopted: (1) To accommodate the concern that Alascom could assign excessive costs to its Bush services, and (2) to recognize the apparent difference in costs within Alascom's network between its Bush and non-Bush geographic rate zones. The proper development of the rates within these two cost categories would be a matter for the Commission tariff review process.

67. We have not recommended a separate study area approach, as suggested by AT&T, for a variety of reasons. First, study areas are generally "self-contained" in that the predominant equipment necessary to provide the utility's service to the study area is located in its entirety within the study area and not split between study areas. By comparison, AT&T's proposal would divide the equipment (e.g., satellite), earth stations, buildings) necessary for the provisioning of Alascom's service, between the study areas that have been proposed. This is not a typical application of the study area concept, would prove controversial, and could set a precedent regarding division of study areas that is beyond the scope of this Joint Board. Second, a study area approach has the potential to affect the intrastate jurisdiction, which could lead to further controversy that could prevent the speedy resolution of this proceeding without effectively adding any benefit.[78]

68. In summary, we recommend that there be two geographic rate zones under Alascom's Common Carrier Service tariff: one zone for services associated with locations where facilities competition is allowed and another zone for services involving the locations where a facilities monopoly is prescribed. To accommodate concerns that costs will be properly allocated to the monopoly operations, Alascom should be required to file a CAP to appropriately assign costs between these two geographic rate zones. Issues arising with regard go Alascom's Common Carrier Services tariff would be resolved in accordance with the requirements of the Communications Act.

c. Private line services. i. Introduction

69. As proposed in the Tentative Recommendation, Alascom would be required to provide interstate private line services statewide, and if AT&T chooses to provide interstate private line services in Alaska, it must do so under Section 214 authority and make available its services statewide to the same extent as comparable AT&T private line services are available throughout the nation.

ii. Comments. 70. AT&T rejects the notion that it could be compelled to obtain Section 214 authority to provide southbound interstate services although that is what it has proposed to do voluntarily under its CBP.[79] AT&T also states that while it would provide private line services pursuant to the

[74] Geographic rate zones should be viewed as the creation of different pricing schedules either by geographic region or group of locations. In this order we will generally refer to geographic rate zones as the difference in rate schedules for services associated with locations where Alascom holds a facilities monopoly (Bush) and services for all other locations (non-Bush).

[75] See Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, 6 FCC Rcd 7571 (1991) 57 FR 4373, February 5, 1992 (Computer III Remand Order), pets for recon. pending, pets. for rev. pending, *California* v. *FCC*, No. 92-70083 (9th Cir. filed Feb. 14, 1992).

[76] Bush services are defined as those interstate services that either originate or terminate in the Bush.

[77] We recommend that Alascom's CAP proposal be subject to notice and comment.

[78] We would not be prepared to recommend any change in Alaska's study areas without consulting with the APUC in conformance with the Commission's standard practice when study area changes are contemplated.

[79] AT&T's Comments (June 28, 1993) at 11; AT&T Application (March 31, 1993) at 3.

Communications Act, it could not be assumed that its terms, conditions, and service area for private line services would be the same as that for MTS.[80] Alascom implies that it should not be required to provide private line service and instead proposes that it provide "private line links" similar to special access.[81]

iii. Discussion. 71. In this order we reaffirm the provisions of the Tentative Recommendation with respect to private line services. While we recognize Alascom is currently providing interstate private line service as a dominant carrier, we believe it is necessary for the market structure adopted by the Commission to be explicit in this matter to ensure uninterrupted and universal service in Alaska. Alascom must continue to provide statewide interstate private line service. It would appear neither practical nor reasonble for Alascom to function solely as a "special access" provider in the market and to abandon its private line service at this time. Otherwise, Alascom's private line customers would likely be stranded without service since Alascom has not identified which carrier, if any, would take over its responsibility in the private line market.

72. With respect to AT&T's private line services, we recommend that if AT&T chooses to provide interstate private line service to and from Alaska, it be required to do so under the same rate structures, terms, and conditions attendant to its provision of private line services among the Lower 48 states.[82]

d. Dominant carriers. 73. The Tentative Recommendation proposed that both Alascom and AT&T retain their status as dominant carriers while the JSA existed. Upon JSA termination, AT&T would be considered dominant for the provision of both northbound and southbound MTS services. Additionally, AT&T would be considered dominant in the provision of service in the Alaska-Hawaii market. We proposed that in the post-JSA market, Alascom would initially continue to be considered dominant for its provision of MTS, private line, and Alascom Common Carrier Services, with the proviso that Alascom's status could be reviewed after the recommended transition period. Alascom's dominant status was based upon its primary control over the Alaska Spur, its statewide network, and its service and facilities monopolies in those areas where duplicate earth station construction is prohibited.[83]

i. AT&T's dominant status. (1) Comments. 74. AT&T challenged the proposal that it be designated as a dominant carrier for southbound Alaska MTS service.[84] Sprint's Reply Comments supported AT&T's dominant carrier status for provision of Alaska service. Sprint stated that the Commission has taken the position that there is a single national relevant geographic market (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points) for AT&T's interstate domestic, interexchange telecommunications service with no relevant submarkets. Although in the past the Commission has indicated that it might consider different markets for AT&T, Sprint argues that in later cases it has declined to do so. Sprint further observed that the record was insufficiently developed to warrant that treatment of Alaska as a separate geographic market or submarket for determining AT&T's market power. Hawaii also pointed out in Reply Comments that customer perception, the factor cited by AT&T to support its contention that it is non-dominant in the Alaska southbound market, is just one feature to consider when determining market dominance; the number and size distribution of competing firms, the nature of barriers to significant entry (including control of significant facilities), and the availability of reasonably substitutable services must also be evaluated.[85]

(2) Discussion. 75. After considering the parties' comments, we find that the record is insufficient to justify that Alaska be deemed a separate relevant AT&T geographic market or submarket, nor would treatment of Alaska as a submarket be consistent with the Commission's rate integration policy. Since AT&T is classified as a dominant carrier for its provision of MTS in the Lower 48, this classification should be equally applicable to AT&T's provision of MTS to and from Alaska and between Alaska and Hawaii.

ii. Alascom's dominant status. 76. No party, including Alascom, filed comments in response to the conclusions in the Tentative Recommendation regarding this issue. We continue to believe that Alascom should be classified as a dominant carrier.

4. Circuit Equipment Allocation Factor/ Alaska Fund

a. Introduction. 77. In the Tentative Recommendation we proposed to reduce the frozen allocation factor for Alascom circuit equipment from 86% to 75%. This change was recommended for several reasons, including enhanced interstate and intrastate competition as well as more accurate recognition of the character of Alascom's costs. In addition, the same separations factor would be applied to UUI's one-half interest in the earth stations owned and operated by Alascom.

78. The allocator proposed under the Tentative Recommendation would be implemented January 1, 1994, but the shift in circuit equipment costs from the interstate to the intrastate jurisdiction would be phased in over 10-years. The difference between the 75% factor and the factor in effect during each year of the phase-in would be paid from a special Alaska Fund. The Alaska Fund would be administered by NECA, which would file a tariff to collect the requisite funds from all interchange carriers that contribute to the Universal Service Fund and would make payments from the Alaska Fund to Alascom and UUI. At the end of 10 years, The Alaska Fund would be terminated and the 75% interstate allocator would be fully in effect. We tentatively concluded that, in the context of the overall transition plan, 25% of Alascom's circuit equipment costs, but no more than 25%, could be assigned to the intrastate jurisdiction without causing an undue increase in intrastate rates. However, we specifically invited comments on this point.

b. Comments. 79. In the Implementation Plan filed on June 7, 1993, Alascom presented financial data and commentary regarding the impact of the Tentative Recommendation on the Joint Board's goal of revenue requirement neutrality. Alascom assumed that the 75% circuit equipment allocation factor would be in effect at the end of the 10-year transition period and analyzed the impact of varying levels of accelerated cost recovery ("ACR") on intrastate rates. Based on its 1992 year-end financial statements and

[80] AT&T's Comments (June 28, 1993) at 10.

[81] Alascom Implementation Plan (June 7, 1993) at 26.

[82] Hawaii maintains that rate integration applies to all telecommunications services, particularly MTS and private line service. Hawaii has also asked that the Commission clarify that rate integration applies to service between the contiguous states and Hawaii or Alaska and between Hawaii and Alaska. Hawaii Comments (June 28, 1993) at 20. We have specifically declined to address the issue of rate integration beyond the Alaska MTS market because the issue of rate integration applying to other interstate services is beyond the scope of this proceeding.

[83] Tentative Recommendation, CC Docket No. 83-1376, 8 FCC Rcd at 3689, para. 39.

[84] AT&T Comments (June 28, 1993) at 10–14.

[85] Hawaii Reply Comments (July 12, 1993) at 2–3.

several assumptions,[86] Alascom estimated that with ACR of $150 million paid over three years, there was a net increase in annual intrastate operating expenses of $23 million or 71% from 1993 to 2000 due to the change in the circuit equipment allocator. Alascom estimated that the intrastate revenue requirement shortfall would be $19 million or $.0609 per minute in the year 2000.[87] Performing the same analysis using ACR of $221 million paid over three years, Alascom contended that there would be a $13.8 million revenue requirement shortfall in the year 2000.[88]

80. Alascom argued that revenue requirement neutrality could not be assured simply by reducing plant; rather, it would be necessary to reduce expenses.[89] Alascom also stated that "any significant cost reduction must be sought from the labor force, the only material, residual cost category remaining."[90] Alascom stated that its ACR analyses already included a 10% reduction in the work force. However, Alascom stated that an additional 23% cut in positions would be required to meet the $4 million intrastate revenue requirement shortfall projected for 1993 under the $221 million ACR assumption.[91] Alascom argued that the labor cuts necessary to achieve revenue requirement neutrality were unrealistic and, in any event, would severely harm its ability to deliver service. Alascom further asserted that technological change alone would not be adequate to address the issue of Alaska's high service costs.

81. In its July 12, 1993 Comments, Alascom proposed increasing ACR by a prepaid expense of $72 million, which it described as a "Transitional Credit Facility" or "TCF". Alascom stated that the TCF was designed to moderate AT&T's abandonment of the Alascom network and any intrastate cost shifts that would result. The TCF would be amortized over a four-year transition period after termination of the JSA; the more AT&T used Alascom to carry traffic, the more of the TCF AT&T would recover. Using the same underlying financial data it relied on for its Implementation Plan, Alascom argued that a $221 million ACR plus a $72 million TCF would result in an intrastate rate decrease of 3% in 1997 and thereafter.[92]

82. Alascom filed Reply Comments on July 22, 1993, in which it maintained that AT&T did not care about intrastate cost increases because it would not base its prices on costs. Alascom stated that AT&T's data demonstrated that its intrastate costs would exceed revenues every year, which raised concerns about predatory, anticompetitive behavior.[93]

83. AT&T's June 7, 1993 Response did not address the change in circuit equipment allocation factor. However, in its June 28, 1993, Comments AT&T stated that on the basis of Alascom's figures, implementing the Tentative Recommendation was likely to lead to increases in Alascom's intrastate revenue requirements in both the short and long term.[94] AT&T then suggested that revenue requirements and by implication, revenue requirement neutrality were not the appropriate standard in a competitive environment.[95] While endorsing the rationale in the Tentative Recommendation for changing the existing allocation factor, AT&T stated that the issue of separations changes would be irrelevant under the CBP.[96] Finally, AT&T was critical of the complex transition mechanisms proposed in the Tentative Recommendation, including the establishment of the Alaska Fund.

84. AT&T's July 12, 1993 Reply Comments stated that the Tentative Recommendation failed to provide reasonable assurance that intrastate rates would not be increased with the introduction of a competitive market structure.[97] AT&T reiterated its position that, while the existing allocator is inappropriate and unfair, no change was necessary under the CBP; and, without a change in the separations factor, no Alaska Fund was required.[98] AT&T concurred in changing the frozen allocator if the Tentative Recommendation were adopted and, therefore, opposed the State of Alaska's suggestion that ACR be dedicated totally to interstate plant because that would negate the use of ACR to offset jurisdictional cost shifts.[99] AT&T maintained that, ultimately, the forces of competition could be relied on to keep intrastate rates at or below their current levels. In response to Alascom's claims of possible predation, AT&T projected that, under the CBP, its intrastate revenues would exceed intrastate revenue requirements for the period 1999–2003.[100]

85. The State of Alaska's June 28, 1993 Comments raised concerns regarding the extent of the jurisdictional cost shift created by the change in allocation factor proposed in the Tentative Recommendation. Based on the size of the Alaska Fund in years 1994–1997 and other anticipated increases in intrastate cost allocations, the State of Alaska estimated that intrastate costs would increase by more than $10 million or $40 per year per access line.[101] The State of Alaska suggested that the intended purpose of the change in allocation factor, *i.e.* reducing Alascom's interstate costs, could be accomplished instead by targeting the ACR to interstate plant. In addition, according to the State of Alaska, retention of the existing separations factors would negate the necessity for an Alaska Fund and would be more consistent with policies and procedures for achieving rate integration and universal service in the rest of the country.[102]

86. In its June 23, 1993 Comments, UUI endorsed the use of a frozen allocator for separating circuit equipment costs and the consistent application of this factor regardless of ownership of the facilities.[103] UUI also recommended that the Alaska Fund be administered on the same basis as state access charges (*i.e.*, no "true-up") rather than on the basis of other NECA funds.[104] UUI's July 12, 1993 Reply Comments challenged AT&T to state clearly its position on the use of a frozen allocator and what separations factor it is endorsing for Alaska.[105]

87. In other comments filed, ATA generally supported the phased-in change in allocation factor.[106] ATU expressed concern with the potential impact of the Tentative Recommendation on access costs and

[86] The major assumptions are listed on pages 11 and 12 of Alascom's Implementation Plan (June 7, 1993).

[87] *Id.* at 13–14, Exhibit H.

[88] *Id.* Exhibit J.

[89] "Reliance solely upon an ACR program cannot achieve the revenue requirement neutrality goals established in 1989 by the Joint Board and reaffirmed in the Tentative Recommendation. This is part of the 'intractability' of the Alaska service problem. Therefore, to the extent the problem cannot be solved by addressing the plant part of the equation, the expense side of the issue must come into question," *Id.* at 16.

[90] *Id.* at 16–17.

[91] *Id.*

[92] Comments of Alascom (July 12, 1993) at 12–14.

[93] Alascom Reply Comments (July 22, 1993) at 7–8.

[94] AT&T Comments (June 28, 1993) at 17.

[95] *Id.* at 19.

[96] *Id.* at 22.

[97] AT&T Reply Comments (July 12, 1993) at 3.

[98] *Id.* at 5.

[99] *Id.* at 6.

[100] *Id.* at 7.

[101] State of Alaska Comments (June 28, 1993) at 4–5.

[102] In Reply Comments, dated July 12, 1993, the State of Alaska reiterated its position that the Tentative Recommendation should be modified to retain the existing circuit equipment allocator in order to avoid intrastate cost shifts and rate increases.

[103] UUI Comments (June 23, 1993) at 2–3.

[104] *Id.* at 3.

[105] Reply Comments of UUI (July 12, 1993) at 3–4.

[106] ATA Comments (June 24, 1993) at 4.

rates and local rates of LECs based on changes in demand resulting from increased intrastate interexchange rates.[107] USTA did not object to the phasing down of the separations factor for Alascom and UUI but suggested that the full impact of any resultant increase in local rates needed to be considered so as not to jeopardize universal service.[108] MCI opposed requiring all interexchange carriers to contribute to the Alaska Fund.[109] Sprint questioned the need for the Alaska Fund and why such costs could not be recovered from the intrastate jurisdiction rather than from interstate interexchange carriers that do not use Alascom's services.[110] In its reply comments Sprint reiterated its objection to the Alaska fund generally and expressed its opposition to AT&T's suggestion that contributions to such a fund be based on minutes of use.[111] NECA expressed its willingness and ability to administer an Alaska Fund, if it were created, and offered suggestions regarding the structure of the fund and the provision of data to NECA.[112]

c. Discussion. 88. We initially proposed a reduction in the interstate circuit equipment allocator in conjunction with an overall plan for a transition to a more competitive environment, with the expectation that this plan would enhance the development of competition in Alaska with minimal intrastate cost shifts at the conclusion of a 10-year phase-in period. Based on the comments in response to this proposal, we are changing significant aspects of the proposed overall plan for achieving our five objectives in this proceeding. With these modifications, which include the termination of the JSA after one and one-half years and the shortening of the subsequent transition period to two and one-half years, we conclude that the change in cost separations factor set forth in the Tentative Recommendation is neither necessary nor desirable as a transition mechanism for the new market structure.

89. The cost analysis presented by parties have persuaded us that the change in cost separations factor set forth in the Tentative Recommendation would violate the revenue requirement neutrality objective we established in the Supplemental Order, and therefore, the 86% interstate allocator should be retained for Alascom's equipment.

90. The retention of the current separations factor would significantly simplify the transition. There would be no need for the Alaska Fund, eliminating both the need to resolve the issues raised with respect to its policy premises and operation and the administrative costs of establishing and operating this separate fund for a limited time period.

91. Another reason for reaffirming the current frozen allocation factor is recognition that the market structure contemplated under this order eventually will reduce the importance of cost separations rules on rates for services. The price cap regime which currently governs AT&T's interstate rates reinforces this supposition. We believe that the revised transition time frames we recommend are sufficiently short to make it on the one hand, unnecessary to consider a change in the allocation factor at this time and, on the other hand, necessary to provide the intrastate ratepayers with adequate assurance against more rapid, unforeseen revenue requirement shifts that may occur.

92. In addition, we recognize that the factor at issue applies both to AT&T and Alascom and that it may be preferable for any modifications to the factor to be based on broader considerations than were contemplated in this proceeding. While the current mileage-based factor may not be applicable for all components of circuit equipment, it was approved by another joint board and is presumptively appropriate until modified.

93. Accordingly, we recommend that the frozen 86% interstate allocator be retained for Alascom's and UUI's circuit equipment.[113]

V. Transition Mechanisms

94. A number of transition mechanisms will be required as a condition of adoption and successful implementation of the market structure which is recommended in this order. We believe that the Commission can modify the status quo and place conditions on JSA termination to achieve the five objectives and the public interest under Sections 1, 4(i)–(j), 201, and 202 of the Communications Act.[114] Consequently, the Commission has the authority to require implementation of the transition mechanisms that we recommend in this section, even after the JSA is terminated.

A. Transition Periods For JSA Termination and AT&T's Use of Alascom Facilities

1. Introduction

95. Under the *Tentative Recommendation* we proposed that the JSA be eliminated after three years. This transition period was chosen to allow for Alascom's adjustment to the competitive conditions under the market structure, to develop and to approve the required Alascom tariffs, and to implement certain transition mechanisms.

96. The Tentative Recommendation further proposed that, after the JSA was eliminated, AT&T would be required to purchase Common Carrier Services from Alascom for four years. Under the Tentative Recommendation, AT&T's purchase obligation would be reduced in equal annual increments until it was zero at the end of the fourth year.[115] As proposed, those increments would be based on a percentage of AT&T's MTS traffic carried by Alascom during the last year of the JSA. The Tentative Recommendation stated that the purchase requirement was necessary to reduce the potential for unforeseen jurisdictional revenue requirement shifts if AT&T immediately stopped using Alascom's facilities.

2. Comments

97. Alascom contended that the JSA should not be eliminated, but that if termination were required, that termination should occur no sooner than the timetable set forth in the Tentative Recommendation.[116] Alascom argued that the JSA was lawful, that it had successfully achieved universal service, and that it did not harm competition.[117] Alascom stated that allowing AT&T into the market would lead to harmful effects.[118]

98. ATA stated that delaying AT&T's ability to build its own facilities in Alaska would reduce AT&T's incentives to invest in the Alaska market.[119] ATA also stated that the Tentative Recommendation eliminated Alascom's incentive to upgrade its equipment or to prepare for replacement of the Aurora II

[107] ATU Comments (June 28, 1993) at 1–2.

[108] Reply Comments of USTA (July 12, 1993) at 2–3.

[109] MCI Comments (June 28, 1993) at 1.

[110] Comments of Sprint (June 28, 1993) at 3–4.

[111] Reply Comments of Sprint (July 12, 1993) at 2.

[112] NECA Comments (June 28, 1993) at 1–4.

[113] Since the circuit equipment allocation factor proposed for UUI mirrored that for Alascom, it also will remain at the 86% interstate level.

[114] 47 U.S.C. 151, 154(i)–(j), 201, 202.

[115] The Tentative Recommendation also allowed Alascom and AT&T to propose an alternative schedule for reduction of AT&T's purchase obligation, subject to the Commission's approval. Tentative Recommendation, 8 FCC Rcd at 3696, para. 84.

[116] Alascom Implementation Plan (June 7, 1993) at 23.

[117] Comments of Alascom (July 12, 1993) at 42–55.

[118] *Id.* at 44.

[119] ATA Comments (June 25, 1993) at 5.

satellite, whose estimated life would terminate in 2001.[120]

99. Similarly, AT&T stated that continuing the JSA until 1997 would force it to delay entering the market at which time AT&T might no longer have an economic incentive to construct the network proposed under the CBP.[121] AT&T further argued that parties supporting the Tentative Recommendation would benefit from the delay created under that plan.[122] With regard to the Tentative Recommendation's transition mechanisms, AT&T stated that there was no legal basis for requiring it to purchase services from Alascom after the JSA was terminated.[123]

100. GCI supported termination of the JSA and stated that the Tentative Recommendation provided a workable compromise for the JSA's replacement that should be implemented no later than the beginning of 1994.[124]

101. The State of Alaska argued that the transition timetable set forth in the Tentative Recommendation did not promote quick delivery of new and improved services to Alaska.[125] The State of Alaska's recommended solution to this perceived shortcoming was to reduce the period that AT&T must place traffic on the Alascom network from four to two years.[126] The State of Alaska did not propose any change in the three years that were proposed for retention of the JSA.

102. UUI stated that the JSA should remain in effect until AT&T presents an adequate implementation plan for the ACR issue it was requested to address in the Tentative Recommendation.[127] UUI indicated that the transition time under the Tentative Recommendation appeared adequate but continued to question Alascom's viability as a transport carrier if AT&T were allowed to construct its own facilities in Alaska.[128]

3. Discussion

103. Based on the comments filed, and in light of the other changes recommended in this order, we have reconsidered the schedule proposed for termination of the JSA and for AT&T's obligation to purchase services from Alascom. We now recommend that both of these transition mechanisms should be shorter in duration than originally proposed.[129]

104. The comments present strong reasons to believe that, overall, the transition timetable under the Tentative Recommendation is too long. First, concerns have been raised by parties, including the State of Alaska, that a long transition period disadvantages Alaskans because it discourages carriers from investing in new technologies and new equipment and from entering this market. No party has suggested that these concerns regarding investment and entry are immaterial or inconsequential.[130]

105. Second, several parties have noted that the useful life of the Aurora II satellite is expected to end by 2001 and that significant lead time is required for planning and launching its successor.[131] It is critical for universal service that a satellite be available to provide transport services to remote rural Alaskan locations. We conclude that, to the extent reasonably possible, our transition mechanisms should be shortened so as not to interfere with the orderly replacement of Aurora II capacity. A shorter transition should reduce uncertainties as to service requirements applicable to this market and as to the financial issues involved. Third, AT&T states that it may be at a competitive disadvantage in the future if it is not now given the freedom enjoyed by its competitors to build facilities as necessary in Alaska. Surveys conducted by AT&T also suggest that Alaskans would welcome the opportunity for AT&T to enter the market.[132]

106. Last, we believe that other changes in our proposed market structure adequately address the concerns underlying Alascom's opposition to any shortening of our proposed transition. That opposition reflected Alascom's view that our originally proposed transition period was the minimum period required for it to adapt to the proposed market structure because of the substantial revenue requirement shifts to the intrastate jurisdiction that it projected. As explained *supra*, this final recommendation retains the existing cost separations factor for Alascom's circuit equipment. This modification in conjunction with our other recommendations significantly reduces, if not eliminates, the intrastate cost shift that Alascom could have experienced under the Tentative Recommendation.[133] Because of this and because retention of the frozen separations allocator simplifies the transition, this final recommendation also substantially decreases the uncertainty associated with the transition. In sum, without a change in the separations factor, the differences between the status quo and the new market structure are reduced. This, in turn, permits a shortening of the transition mechanism previously proposed.

107. We have thus concluded that the transition to the new market structure can and should be completed by March 1, 1998. We recommend that the implementation of the revised market structure should begin March 1, 1994. This would allow four years for the transition from the status quo to a fully competitive market structure. We affirm our proposal in the Tentative Recommendation that there should be two phases to the transition, a phase during which the JSA would be in effect and a phase after termination of the JSA during which AT&T would be obligated to purchase declining levels of Alascom's Common Carrier Services under tariff. We also recommend that the duration of each of these phases should be one and one-half years for continuation of the JSA and a period of two and one-half years for the phase down of AT&T's obligation to purchase Alascom's Common Carrier Services under tariff.[134] The second time period is consistent with the recommendation of the State of Alaska, which proposed that AT&T's "must purchase" obligation should be reduced from four to two years and that our entire proposal is

[120] *Id.* at 5–6.

[121] AT&T Comments (June 28, 1993) at 26.

[122] AT&T Reply Comments (July 12, 1993) at 2.

[123] AT&T Comments (June 28, 1993) at 20.

[124] GCI Comments (June 28, 1993) at 1–2.

[125] State of Alaska Reply Comments (July 12, 1993) at 2–3.

[126] *Id.* at 3.

[127] UUI Reply Comments (July 12, 1993) at 3.

[128] UUI Comments (June 23, 1993) at 4.

[129] This recommendation assumes that all major aspects of this recommendation will be placed in effect. Our recommendation incorporates provisions that are designed to balance many factors; the elimination of any of these provisions would upset that carefully crafted balance.

[130] At hearings held before an Alaska Telecommunications Task Force on August 27, 1993, Alascom and the State of Alaska stated separately that uncertainties in the Alaska market structure would inhibit investment in that market.

[131] In particular, UUI has indicated that it takes approximately four years to negotiate an RFP and to build and launch a replacement satellite. UUI further stated that in order to assure adequate satellite coverage of Alaska, by 1997 "someone will need to step forward to spend approximately $100 million to replace Aurora II." UUI comments (June 28, 1993) at 8.

[132] AT&T Supplemental Replay Comments (July 12, 1993) at Exhibit A. There are also letters from members of the public filed in the record of this proceeding that oppose AT&T's entry primarily because of concerns about degradation in universal service and service quality. We believe that our recommendation mitigates these concerns by imposing service requirements on AT&T and Alascom.

[133] The change in separations factor in conjunction with our other changes proposed under the Tentative Recommendation was one of the key motivating factors that led us to recommend the seven and ten year transition periods.

[134] AT&T's comments regarding the legal basis to establish transition mechanisms are addressed in *supra* paras. 49–50, 94 and *infra* paras. 122–127.

consistent with the idea that the majority of key market changes occur so as not to interfere with the satellite replacement. At the Telecommunications Task Force hearing conducted on August 27, 1993 (see para. 23, *supra*), GCI and MCI stated that reduction in the timeframe, as proposed by the State of Alaska, would be acceptable, and AT&T generally supported a shorter transition period.

B. Transition Payments, Accounting Issues, and AT&T's Use of Alascom Facilities

1. Introduction

108. Under the Tentative Recommendation we concluded that it was necessary to reduce Alascom's costs through an ACR mechanism to ameliorate potential cost shifts to the interstate jurisdiction and to allow Alascom to better adapt to the new market structure. We were concerned that cost shifts could occur as a result of our proposed change to the separations factor for circuit equipment and as a result of possible AT&T reduction in use of the Alascom network. The Tentative Recommendation did not identify the exact form of ACR that was to be adopted and, instead, requested Alascom and AT&T to file implementation plans to suggest an appropriate mechanism. One option suggested under the Tentative Recommendation was that the ACR be provided through accelerated depreciation of assets funded by lump payments made by AT&T to Alascom.

2. Comments

a. Accelerated cost recovery. 109. Alascom generally supported the ACR mechanism proposed in the Tentative Recommendation. Alascom expressed concern, however, that the amount paid be sufficient to achieve the Joint Board's goals, particularly jurisdictional revenue requirement neutrality.[135] Alascom stated that a total ACR payment of $150 million was too low and that the figure should be $221 million with an additional TCF payment of $72 million to offset operating expenses.[136] Alascom argued that significant jurisdictional cost shifts would occur absent adequate ACR payments.[137]

110. In its response to the Joint Board's request for implementation plans, AT&T failed to present a proposed ACR mechanism; rather, it objected to the entire concept for several reasons. First, AT&T characterized ACR as an inefficient way to reduce Alascom's costs inasmuch as Alascom's costs were perceived to be driven primarily by its high operating expenses. Second, AT&T believed it would not recoup as much as it would pay under the ACR mechansim.[138] Third, AT&T objected to having the responsibility to fund cost reductions for its competitor.[139] Fourth, AT&T argued that the Commission has no legal authority to compel AT&T to enter into a voluntary agreement under which it would bear sole responsibility for this obligation to Alascom.[140] Fifth, AT&T questioned the need for an ACR, stating that Alascom had not demonstrated that it could not function profitably in a competitive market without subsidy.[141]

111. ATA concurred with AT&T that the key to achieving revenue requirement neutrality under the Tentative Recommendation would be reducing what it believed to be Alascom's high operating costs.[142] ATA also raised the concern that the ACR proposal would be ineffective if Alascom were to continue to install plant during the transition period.[143]

112. The other parties that filed comments in response to the Tentative recommendation were nearly unanimous in their endorsement of some form of ACR for Alascom.[144]

b. Application of payment. 113. AT&T proposed that any plant write-down under an ACR mechanism be limited to plant employed to provide services to other carriers.[145] Alascom stated that the ACR should be applied as broadly as possible.[146] GCI and the State of Alaska contended that any ACR-funded plant write-down should apply only to interstate MTS plant.[147] They raised concerns regarding potential litigation and the dilution of the effects of the ACR if it were applied to the entire Alascom rate base as opposed to just the interstate portion. AT&T stated that it would be inappropriate to apply ACR payments solely to Alascom's interstate plant; to do so would limit the effectiveness of the ACR in meeting its purposes of offsetting the jurisdictional cost shifts and minimizing the upward pressures on intrastate rates that would result from the separations change proposed under the Tentative Recommendation.[148] GCI also suggested that for every year of the transition, Alascom should file a proposed accounting treatment for any write-down with the Commission's Common Carrier Bureau. UUI recommended that the JSA remain in place until AT&T adequately addressed the ACR problem.[149]

3. Discussion

a. Transition payment. i. Legal issues. 114. AT&T has argued that the Commission does not have the legal authority to force it into a voluntary agreement nor can the Commission compel AT&T alone to make the transition payment.[150] We have concluded that neither argument prevents the Commission from requiring a transition payment as a condition for implementing a new market structure that achieves the proper balancing of Joint Board objectives that are derived directly from the Communications Act. we also note that this accomplishes AT&T's long sought-after goal of terminating the JSA, under which it estimates that it loses $80 million per year.

115. We conclude that a payment is essential to a successful transition to a post-JSA Alaska market structure, in particular to prevent a reduction, or impairment, in universal service during the transition from the unique market structure under the JSA to a more open competitive market structure comparable to that prevailing in the Lower 48. We recommend that Alascom be directed to use that transition payment to reduce its investment which, in turn, will lower its costs of operation as new technologies and more cost efficient, competitive equipment are introduced into the Alaska market. This is necessary to address, and balance, three of the Joint Board's goals:

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[135] Alascom had previously opposed any form of ACR, but in its recent comments it has stated that such a mechanism was essential. Alascom Implementation Plan (June 7, 1993), *passim*.

[136] Alascom Implementation Plan (June 7, 1993) at 9–16, Exh. H; Alascom Comments (July 12, 1993) at 8–15.

[137] Alascom Comments (July 12, 1993) at 8.

[138] AT&T stated: "on a net present value basis, AT&T would not recoup through lower Alascom charges about 14 cents for each dollar paid to reduce Alascom's asset base." AT&T Implementation Plan (June 7, 1993) at 4.

[139] AT&T Implementation Plan (June 7, 1993) at 3–6.

[140] AT&T Comments (June 28, 1993) at 20.

[141] *Id.* at 18–19.

[142] ATAComments (June 25, 1993) at 6.

[143] ATA testimony, Telecommunications Task Force Hearing (August 27, 1993).

[144] UUI Comments (June 23, 1993) at 2; Comments of GCI (June 28, 1993) at 4; Comments of the State of Alaska (June 28, 1993) at 4; Comments of SWB (June 28, 1993) at 4.

[145] AT&T Implementation Plan (June 7, 1993) at 5.

[146] Alascom Implementation Plan (June 7, 1993) at 37.

[147] GCI Comments (June 28, 1993) at 5; State of Alaska Comments, (June 28, 1993) at 5.

[148] AT&T Reply Comments (July 12, 1993) at 6.

[149] UUI Reply Comments (July 12, 1993) at 2.

[150] AT&T Comments (June 28, 1993) at 19–20; AT&T Comments On The Proposal of the State Members Of The Federal-State Joint Board (December 18, 1992) at 6.

Revenue requirement neutrality, rate integration, and universal service.[151]

116. The JSA is styled after the pre-divestiture settlements contracts that governed payments among carries for jointly provided interstate services. "From the mid-1940s until the advent of access charges, most LECs recovered the bulk of their interstate revenue requirement through a 'pooling' process administered by AT&T known as settlements and division of revenues. This process was sometimes referred to as a 'partnership' because it permitted LECs to achieve a uniform, rate of return on their investment. It also helped AT&T maintain a nationwide average toll rate schedule." [152] As previously noted, the JSA was a similar pooling vehicle that Alascom and AT&T elected to use to achieve the rate integration requirement for the Alaska interstate market.

117. The Commission has ample authority under Sections 1, 4(i), and 201 of the Communications Act, *inter alia*, to require a transition payment to avoid the potentially harmful consequences of "depooling" that will result from terminating the JSA. There is clear precedent for using transitional inter-carrier payments to achieve valid Commission policy objectives. For example, the FCC mandated carrier common line ("CCL") pooling in creating the post-divestiture access charge structure.[153] The mandate was needed because the Commission believed that LEC-specific CCL rates might generate significant pressures upon IXCs to deaverage interstate toll rates. CCL pooling was identified as a mechanism to forestall this eventuality.

118. The Commission recognized, however, that not all consequences of CCL pooling were beneficial, as it was found that pooling limited LEC cost recovery flexibility, established economically inefficient cost/price distortions, and reduced LEC incentives to contain costs.[154] In light of those concerns, the Commission directed the CC Docket 80–286 (Separations) Joint Board to study those issues and sought comments and recommendations on possible modifications to the mandatory CCL pooling of costs and revenues. In response, that Joint Board found that several features had been implemented to mitigate the concern for toll rate deaveraging.[155] The Separations Joint Board found that the mandatory CCL pooling was broader than necessary to achieve the intended public interest benefits and was a hindrance to achieving two goals of access charges: Enhanced incentives to contain costs and the elimination of economically inefficient cost/price distortions.[156]

119. In reducing the mandatory aspects of CCL pooling, the Joint Board recommended transitional mechanisms to forestall the possibility that "depooling, particularly precipitous depooling, could adversely affect the telecommunications marketplace and cause hardship in many areas of the country for ratepayers and LECs alike." [157] Carriers electing to withdraw from the CCL pool would be required as a pre-condition of withdrawal to pay a four year transitional support into the pool, which would be used to provide transitional support payments to LECs that traditionally were net receivers under the mandatory pooling program, but were projected to withdraw from the revised, "voluntary" pool.[158] In addition, a mandatory long term support fund was established to enable those LECs remaining in the pool to charge IXCs the equivalent of what would have been the nationwide average CCL rate had the mandatory CCL pool been maintained.[159] This long term support feature was needed to assure the forestalling of pressures to deaverage toll rates.[160]

120. The Commission adopted the Separations Joint Board's recommendations concerning the revisions to the mandatory CCL pool, concluding:

> The Joint Board has recommended a carefully integrated plan of action for resolving a variety of issues concerning common line cost recovery. These recommendations are designed to further all four of the long standing goals of this proceeding—preserving universal service, promoting economic efficiency, eliminating service pricing discrimination, and deterring uneconomic bypass—and to achieve a proper balance among these goals.[161]

121. On reconsideration, the Commission affirmed its earlier conclusion and observed that the long term support arrangement among all LECs was needed to ensure that small, unaffiliated LECs with high nontraffic sensitive costs would not be forced to impose inordinately high nontraffic sensitive cost recovery burdens on their subscribers.[162]

122. The transition payment we are commending as part of the Alaska market recommendation closely parallels the transitional support payments required pursuant to the CCL pooling revisions discussed above. First, both payments are transitional in nature. The courts have recognized that the Commission has the authority to prescribe transitional policy mechanisms to assure the preservation of universal service and to avoid service disruptions.[163] Second, there is significant similarity between the goals underlying the CCL pooling revisions—universal service and economic efficiency—and the Joint Board's goals. Third, both the required AT&T payment under the Alaska market transition mechanism and the transitional support payments under the CCL pooling revisions concern inter-carrier payments. Fourth, the payments pursuant to each proceeding were an integral part of an overall plan to achieve a proper balancing of competing policy considerations.

123. The Commission's authority to order pooling arrangements such as the recommended payment has been affirmed upon judicial review. In *Rural Telephone Coalition* v. *FCC*, 838 F.2d 1307 (DC Cir. 1988), the United States Court of Appeals for the District of Columbia Circuit ruled that the Commission had the authority to create the mandatory pooling arrangement known as the Universal Service Fund to assist certain high cost local companies to maintain universal service. The creation of the fund was challenged on appeal as a subsidy prohibited under the Communications Act. The Court viewed the allocation of costs underlying the Fund as "a step on the road towards an efficient national telephone rate structure based primarily on access charges levied directly on

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[151] The availability of telecommunications services over the great distances and under the disruptive climatic conditions in Alaska is essential to the safety of life and property as well as the health and well-being of Alaskans. In our judgment, the transition payment recommended herein is essential to making "available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges," as required by the Communications Act. 47 U.S.C. § 151.

[152] *In the Matter of MTS and WATS Market Structure*, 2 FCC Rcd 2324, para. 112 (1987) 52 FR 19896, May 28, 1987. See also id. at para. 112 n. 171.

[153] *Third Report and Order, MTS and WATS Market Structure*, CC Docket No. 78–72, 933 FCC 2d 241 (1983) (hereinafter "Access Charge Order").

[154] *In the Matter of MTS and WATS Market Structure*, CC Docket No. 78–72, 2 FCC Rcd 2324, para. 115 (1987); In the Matter of MTS and WATS Market Structure, CC Docket No. 78–72, 2 FCC Rcd 2953, para. 23 (May 19, 1987), 52 FR 21536, June 8, 1987.

[155] *In the Matter of MTS and WATS Market Structure*, 2 FCC Rcd 2324, paras. 117–120 (1987).

[156] *Id.* at para. 120.

[157] *Id.* at para. 121.

[158] *Id.* at para. 98.

[159] *Id.*

[160] *Id.* at para. 127.

[161] *Id.* at para. 27.

[162] *In the Matter of MTS and WATS Market Structure*, CC Docket No. 78–72, 3 FCC Rcd 4543 (1988).

[163] *NARUC* v. *FCC*, 737 F.2d 1095, 1135 n.35 (DC Cir. 1984).

customers."[164] The FCC's statutory authority pursuant to Sections 1 and 4 of the Communications Act, 47 U.S.C. 151 and 154, was approved as the basis for mandating the Fund. Additional challenges to the specific features of the Fund were raised, with the principal objection that the Fund would not necessarily achieve its intended purposes. The Court dismissed these challenges, noting:

The fund as proposed may well produce anomalous results, and there may be 'better' means of aiding the truly needy. [citation omitted.] Our task, however, is not to determine the best means, but only to decide whether the means selected by the Commission are lawful, supported by substantial evidence after consideration of relevant factors, and rationally connected to the facts. The Commission determined that the Fund would serve the statutory objective of universal service at reasonable charges. 47 U.S.C. Section 151 (1982). The Fund was not proposed as a welfare scheme; if it were, the Commission would have exceeded its authority. Rather, the Commission seeks to moderate excessive NTS local exchange plant costs in order to ensure that rates are within the means of the average subscriber. As an interim measure, this decision was within the Commission's discretion.[165]

124. The transition payment is an integral part of our recommendation that is designed to preserve universal service and revenue requirement neutrality by permitting Alascom to continue to provide throughout Alaska during a period of rapidly accelerating, but selective, competition that would drain Alascom revenues where Alascom is most vulnerable competitively, thereby impairing its continuing ability to provide interconnecting services throughout the state.[166] We thus conclude that the Commission has the requisite authority to require the transition payment from AT&T to Alascom.

125. The obligation to provide the intercarrier transition payment rests with AT&T. AT&T was initially required to provide rate integrated services and to serve the Alaska interstate market jointly with Alascom in connection with the Commission's provision of satellite acquisition and operation authority to AT&T. That requirement was imposed solely on AT&T prior to the advent of competition in the interstate MTS market. However, as discussed above, AT&T and Alascom jointly negotiated and implemented the JSA during a period when competition had been authorized and had begun to be implemented for the interstate MTS market in the Lower 48. Nevertheless, AT&T did not object to its responsibility for this obligation when it was initially imposed, despite the existence of, and the real potential for, competitors in the market in light of competitive policies that were then being adopted by the Commission. While objections to the continuation of the JSA were raised later by AT&T, they did not go to the sole service responsibility issue.

126. When imposing rate integration responsibility for the interstate Alaska market on AT&T, the Commission acknowledged AT&T's dominance in the interstate MTS market.[167] This classification continues today. In addition to preserving universal service, maintaining revenue requirement neutrality, and encouraging economic efficiency, the transition payment is necessary to maintain the rate integration goal that has been a guiding policy for structuring the Alaska interstate MTS market since 1972 and is one of the Joint Board's goals.[168]

127. We have thus concluded that the transition payment, and phased reduction in AT&T's required use of Alascom facilities, together with our recommendation that the Commission maintain the current frozen allocator, will maintain our goals of universal service and revenue neutrality.

ii. Amount of payment. 128. Rather than an ACR mechanism that would involve accelerated depreciation, we have decided to recommend that a reduction in Alascom's plant balances be funded by a transition payment to Alascom of $150 million in two installments ($75 million on March 1, 1994; and $75 million upon termination of the JSA).[169] We have concluded that this payment will meet the goal of revenue requirement neutrality.[170] Support for this conclusion is contained in the data underlying the intrastate revenue requirement increases that were predicted and filed by the principal parties to this proceeding.

129. Specifically, we note that in the Master Agreement filed jointly by AT&T and Alascom in January, 1992, those parties stated that the phase-down of the frozen factor used by Alascom to allocate interexchange circuit equipment would cause an increase in intrastate revenue requirements of approximately $32 million. Alascom stated that this increase was caused by a drop in the factor from its current level of 86% interstate to the level of 62% interstate. Thus, a factor drop of 24% produces an approximate $32 million shift or $1,333,333 for each 1% change in the allocator.

130. In its implementation plan, Alascom provided a "Case A Analysis" that estimated the financial impact of the Tentative Recommendation. In its analysis, Alascom factored in the impact of the transition mechanisms outlined in the Tentative Recommendation. Case A showed that intrastate revenue requirements would decrease during the early years due to the $150 million ACR payment and then steadily increase in the later years as a result of the decreases in the allocation factor and in AT&T usage. Alascom shows that the largest increase in intrastate revenue

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[164] *Rural Telephone Coalition* v. *FCC*, 838 F.2d 1307, 1314–15 (DC Cir. 1988).

[165] *Id.* at 1316.

[166] At present, only Alascom provides universal connectivity throughout the State of Alaska.

[167] See, *e.g.*, *In the Matter of Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities*, Docket No. 16495, 35 FCC 2d 844, paras. 5, 9 (1972).

[168] Without an acceptable transition payment mechanism the Joint Board would be unlikely to recommend termination of the JSA.

[169] This recommendation is a variation on the proposal we identified in the Tentative Recommendation that recommended reducing net plant balances by accelerating depreciation. We now achieve the same end result by simply crediting the plant accounts without accelerating the depreciation rate. We have reviewed the comments suggesting various ways to construct and target an appropriate ACR mechanism. Alascom's costs are primarily a combination of plant costs and operating (*i.e.*, non-plant related) expenses. Unquestionably, Alascom has greater control over its operating expenses than its plant costs which are largely a function of the existing equipment in service (*e.g.*, network configuration, switch size). While a few commenters have suggested a need to consider an ACR for Alascom's expenses, no proposal, with the exception of Alascom's proposed TCF, has been presented for our consideration. We are reluctant to propose a cost support mechanism for Alascom's operating expenses for several reasons; Alascom has control over a substantial portion of these costs and may reduce them at its discretion; it is not know what operating expenses, if any, might truly merit support under the new market conditions; and any subsidy to offset operating expenses would have no lasting effect on costs in that it would not eliminate costs, but merely change who pays the costs during the period payments are made. Consequently, we do not recommend adoption of an ACR that includes as a component the TCF proposed by Alascom or any similar payment mechanism to offset operating expenses. Furthermore, absent a change in the cost separations factor for circuit equipment, there are no data on the record to support the necessity of an operating expense subsidy for Alascom.

[170] We have assumed that the $150 million transition payment (to be paid in two installments of $75 million each, the first installment on March 1, 1994, and the second installment, when the JSA terminates, on September 1, 1995) from AT&T to Alascom is taxable income to Alascom. However, we recommend that the parties be required to file, within 60 days of the effective date of the Commission's order, requests with the United States Internal Revenue Service ("IRS") and with the State of Alaska for expedited rulings on whether the transition payment is, in whole or in part, taxable income. If the IRS and/or the State of Alaska conclude(s) that the transition payment is not taxable income to Alascom, then AT&T may request that the Commission reduce the second installment by the amount of the tax payment(s) that Alascom is not required to make. If reduction in the second installment is thus warranted, we recommend that the Commission adjust the second installment to reflect the results of the requested rulings.

requirements occurs between 1996 and 1997, approximately $12 million.

131. We have examined the differences between the transition mechanisms, and their timing, that are contained in the Tentative Recommendation and that are being recommended in this Final Recommended Decision. When these differences are superimposed on Alascom's Case A Analysis, the increased intrastate revenue requirements predicted by Alascom to start in 1997 will largely disappear given a $150 million plant reduction. Particularly significant is the change in our recommendation regarding the frozen factor. As shown above, the previously recommended drop of 11% in the interstate allocation factor would have produced a shift to intrastate in the order of $14.7 million.[171] Under our current recommendation, this shift will not occur. Further, as discussed below, we are recommending that the transition payment be applied to provide a substantial reduction of the COE switching investment costs. Together, these actions should practically eliminate intrastate cost shifts related to investment. The anticipated decreases in AT&T usage of Alascom's facilities will have very little impact if the majority of Alascom's net COE switching investment and an adequate amount of plan in other plant accounts are no longer on the books to be allocated between the jurisdictions.

132. We also considered possible cost shifts to the intrastate jurisdiction occurring after all the transition mechanisms have been implemented. We have considered the materials in the record and have adjusted the part 36 Separations Study (base case) provided by Alascom in response to Staff Data Request No. 6[172] to reflect forecasted growth factors taken from Alascom's Case A Analysis[173] and the transition mechanisms, including the transition payments recommended in this order.[174] We conclude that there would be no intrastate cost shift given our transition mechanisms and market recommendations.

133. In summary, we conclude that the recommended transition payment to reduce Alascom's investment costs, coupled with the retention of the frozen factor and the crediting of specific Alascom plant accounts for reduction, should achieve the goal of revenue requirement neutrality..

B. Accounting issues. 134. We recommend that the transition payment be applied exclusively to offset certain designated plant account balances.[175] Section 220 of the Communications Act gives the Commission the authority to prescribe the manner in which carriers may keep their regulated books of account. The Commission has adopted accounting rules pursuant to Section 220; they are found in part 32 of the Commission's rules.[176] Part 32 provides no specific accounting instructions for the transition payment in this situation. Therefore, the Commission should be able to prescribe the proposed accounting treatment as long as that treatment is consistent with the purpose of the payment. The purpose of the transition payment is to ameliorate the effects of jurisdictional shifts and ensure that the Commission's universal service mandate is not undermined by termination of the JSA.

135. Accordingly, we recommend that the $150 million transition payment be made in two installments ($75 million on March 1, 1994 and $75 million when the JSA terminates) and be applied to reduce the book cost of depreciable Alascom assets. The payment should not be applied to non-depreciable assets such as "Land" (Account 2111) nor to amortizable assets such as "Capital Leases" (Account 2681).[177] The application of the transition payment to the remaining depreciable assets only, recognizes that future, as well as current, Alascom customers (including AT&T) should benefit from the transition payments.

136. We further recommend that the payment amount be assigned to specific depreciable assets accounts in accordance with the following guidelines. Of particular concern is the potential increase in intrastate costs caused by a change in the jurisdictional allocation of switching investment that could result from decreased AT&T usage of Alascom's switches under the new market structure. Therefore, we recommend that "Central Office Switching" (Account 2210) be designated first for reduction and by an amount necessary to produce little or no increase in intrastate revenue requirements as a consequence of AT&T's decreased switching usage. The remaining depreciable accounts should be reduced proportionately based on their relationship to the total net investment in depreciable assets (excluding the Alaska Spur).[178] It is our conclusion, based on adjustments to Alascom's Part 36 Separations Study, that allocation of the $150 million in this manner will ensure that our revenue requirement neutrality goal is met. This allocation will also mitigate incentives for making more selective distribution of the transition payment in response to competitive pressures with resulting undesirable effects on our revenue requirement neutrality objective.

137. In order to ensure proper assignment of the transition payment to depreciable asset accounts, we recommend that Alascom be required to file with the Commission a detailed proposal for its treatment of the transition payment. We further recommend that the Commission review Alascom's then current end-of-year balances (by account) for gross investment, depreciation reserve, and net investment to verify that the $150 million transition payment (to be paid in two installments of $75 million each) is applied in accordance with this decision.

c. *AT&T's use of Alascom facilities.* 138. The Tentative Recommendation proposed that AT&T's obligation to use Alascom facilities be phased-out by reducing the percentage of traffic that AT&T must place on the Alascom system over four years in four equal increments or on a schedule proposed by the parties and accepted by the Commission. Those filing comments primarily addressed the timing of AT&T's obligation and not the methodology proposed under the Tentative Recommendation.

139. We have reconsidered our previous approach on this matter and recommend that AT&T be required to buy a fixed dollar amount of service from Alascom as opposed to a specific minutes requirement. Our review

[171] This figure assumes an approximate $1.3 million increase in state costs per 1% change in allocator.

[172] Alascom 1993 Separations Study, Business as Usual, ROR, 14%, designated "1993 AKBAS93" by Alascom. See Response to Data Request 6, filed July 23, 1993.

[173] See Alascom's Implementation Plan Response (July 7, 1993).

[174] The adjustments include: (1) the implementation of transition mechanism included herein from 1994–1997; (2) two separations factor changes: tandem (reduced from 59% interstate to 25% interstate) and dial switching (reduced from 88% interstate to 25% interstate) to reflect the potential loss of AT&T usage in the non-Bush areas after the transition period; (3) plant reductions, net of taxes, to reflect the transition payment; and (4) tax rates: 34% federal 9.5% state.

[175] The transition payment is to be applied to plant balances prior to the separation process.

[176] 47 CFR 32.1 *et seq.*

[177] We also recommend that the balance in "Deep Sea Cable" (Account 2425) not be reduced. We agree with AT&T that this account should not be reduced, principally because it is highly unlikely that the wholly interstate usage of this facility will change under the new market structure. Thus, the Alaska Spur is not expected to be the cause of any intrastate cost shifts.

[178] No plant account should be credited with an amount greater than the net balance in that plant account to prevent the new net balance in the account from falling below zero.

concluded that it would be administratively impracticable to identify specifically whether the minutes standard should apply to transport minutes, switched minutes or both. Furthermore, employing a dollars standard would simplify the process, would protect against rapid losses in interstate revenue streams to Alascom, thus further buffering the effects of the loss in AT&T's traffic, and would allow AT&T greater flexibility in deciding how to meet its purchase obligations in a manner best suited to its future construction plans. Consequently, we now recommend that AT&T be required to purchase a set level of dollars of service from Alascom during this phase of the transition period.[179]

140. The purchase level for the phase down related to interstate MTS Common Carrier Services would be computed based on a declining percentage over the transition period applied to a baseline revenue amount. The baseline would be calculated as a function of the demand for transport and switching minutes for the last 12 months that the JSA was in effect multiplied by the new tariff rates for Alascom's Common Carrier Services.[180] The required level (percentage) would be reduced in increments every six months over the transition period until it reaches zero at the end of the period.[181]

141. We continue to recommend that AT&T and Alascom be allowed to propose jointly an alternative method for calculating AT&T's service obligation to use Alascom's Common Carrier Services on a declining scale for the second portion of our recommended transition period. If no joint alternative is forthcoming, our recommended method should be adopted.

C. Alascom Common Carrier Services Tariff

142. As previously discussed, it is our recommendation that the ultimate rate structure for Alascom's Common Carrier Services would be a tariff with two geographic rate zones based on the respective costs of its facilities monopoly and competitive operations.[182] In order to achieve this new rate structure, a number of transitional steps must be taken. First, Alascom would be required to file a detailed CAP that explains how costs would be allocated between these two geographic rate zones. After the CAP has been approved or modified by the Commission, Alascom would apportion its costs to the two categories according to the CAP and then assign the costs within each category to major service subsets (*e.g.*, switching, transport). Alascom's cost of service data and the data supporting the CAP would be reviewed and would be subject to an independent audit.

143. Once costs were properly defined, Alascom would estimate its demand for services and develop rates for inclusion in its Common Carrier Services tariff. The tariff would then be evaluated under the Commission's standard tariff review process. It is recommended that Alascom be directed to file that tariff as soon as possible, with an effective date of September 1, 1995, since a lawful tariff must be on file prior to the termination of the JSA. The Common Carrier Services tariff would be effective upon, and coincident with, the date of termination of the JSA. It is further recommended that the tariff be refiled annually for the first few years with the Commission later determining if less frequent tariff filings would be appropriate.

VI. Miscellaneous

A. Tariffs, Leases, and Contracts

144. The Tentative Recommendation suggested that Alascom be required to file interstate tariffs for its MTS and Common Carrier Services. Also, any contracts or leases for Alascom or AT&T services would be filed for review with the Commission.

145. There were no comments opposing the recommendations that Alascom's MTS and Common Carrier Services be tariffed or that contracts or leases for Alascom or AT&T services be filed with the Commission for review. AT&T supported the tariffing requirement for Alascom;[183] and Alascom, as a common carrier, is required by the Communications Act to file tariffs.[184]

146. In addition, we believe it is necessary that, if contracts or leases between Alascom and AT&T for services are authorized by the Commission, they be filed for Commission review to assure that the market transition fulfills the Joint Board's goals of fostering economic efficiency and competition and that service is provided in a just and reasonable manner.[185]

B. Alaska Spur

147. In the Tentative Recommendation, we proposed that Alascom must file with the Commission for its review all contracts and agreements for interstate service on the Alaska Spur, including any technical standards that may be incident thereto.

148. In its Implementation Plan Alascom stated that it would like to engage in market pricing for the Alaska Spur.[186] GCI expressed concern about Alascom's intention and stated that, since Alascom controlled this essential facility, it must not be permitted to engage in extortionate pricing.[187] AT&T supported cost-based pricing for the Alaska Spur and also requested that the rates be tariffed, or offered on a non-discriminatory contract basis, until an alternative, competitive fiber optic facility linking Alaska and the Lower 48 becomes available.[188]

149. The comments generally support the requirement that the terms and conditions offered by Alascom for use of the Alaska Spur must be public and non-discriminatory. Whether Alascom uses a tariff or files various contracts with the Commission, this requirement must be met. Regarding the pricing for the use of the Alaska Spur, the Joint Board recommends that Alascom must comply with relevant cost-of-service principles. Since the contracts, leases, or tariffs governing use of the Alaska Spur will be submitted for Commission review, the Joint Board concludes that pricing issues can be considered further at that time as necessary.

C. Monitoring

150. In the Tentative Recommendation we stated that progress in achieving the proposed market structure should be monitored by the Commission, using information obtained from existing sources. No party suggested any significant refinement in the level of monitoring that was recommended, and we continue to

[179] In order to achieve our objectives, this dollar commitment must be associated only with services currently provided to AT&T by Alascom under the JSA. For example, AT&T will not be able to meet its dollar commitment by purchasing intrastate services from Alascom.

[180] These new tariffs, as noted elsewhere in this order, would reflect Alascom's reduced costs after application of the transition payment installments.

[181] The percentage of baseline revenues to be used for each six month period is as follows; 90% during the first period; 80% during the second period; 65% during the third period; 45% during the fourth period; and 20% during the last period. These percentages will ensure a controlled reduction to AT&T's purchase obligation that protects the public interest.

[182] Use of the geographic rate zones should not be interpreted as placing restrictions on the rate design within each zone.

[183] AT&T Comments (June 28, 1993) at 29.

[184] 47 U.S.C. 203. These new tariffs, as noted elsewhere in this Final Recommended Decision, would reflect Alascom's reduced costs after application of the transition payment installments.

[185] The terms, rates, and conditions of any contract between AT&T and Alascom must be available to all similarly situated customers.

[186] Alascom Implementation Plan (June 7, 1993) at 24.

[187] GCI Comments (June 28, 1993) at 7.

[188] AT&T Comments (June 28, 1993) at 29.

believe that this facet of the Tentative Recommendation is adequate. We further conclude that the changes to our initial market structure proposal recommendation in this order do not rise to a level that requires modification to our monitoring mechanism. Consequently, we recommend that the Commission monitor the progress made in achieving the market structure proposed in this order by employing existing information sources.

D. Procedural Issues

151. Alascom has presented several challenges to how the Joint Board conducted this proceeding. First, it disputes the classification of this Docket as a nonrestricted rulemaking proceeding for the purpose of the Commission's *ex parte* rules.[189] Related to this claim is Alascom's second contention that the Joint Board has not complied with the Commission's *ex parte* rules applicable to nonrestricted rulemakings.[190] Third, Alascom claims that the Joint Board has failed to comply with the open meeting requirements of the Government in the Sunshine Act ("Sunshine Act").[191] Finally, Alascom alleges that the Commission violated its rules by failing to provide written notice to the parties of a public Alaska Joint Board hearing held in Anchorage on July 1, 1993, or **Federal Register** notice prior to that day.[192] As the discussion of each claim below indicates, none of these contentions has any merit.

1. Classification of CC Docket No. 83–1376 as a Nonrestricted Rulemaking

152. Alascom asserts that the Commission did not comply with Section 410 of the Communications Act and with various provisions of the Administrative Procedure Act ("APA") when it established the Alaska Joint Board proceeding as an informal notice and comment rulemaking subject to non-restricted "permit but disclose" *ex parte* rules. Section 410(a) provides that a joint board established pursuant to that section has "all the jurisdiction and powers conferred by law upon an examiner provided for in section 3105 of Title 5 [*i.e.*, an administrative law judge ("ALJ")], and shall be subject to the same duties and obligations." 47 U.S.C. 410(a). Likewise, section 410(c), under which the Alaska Joint Board was established,[193] provides that a joint board created under that section "shall possess the same jurisdiction, power, duties, and obligations as a joint board established under [section 410(a)]." 47 U.S.C. 410(c). Alascom argues that these provisions require the Alaska Joint Board to follow the same APA prohibitions on *ex parte* presentations that apply to formal rulemakings and adjudications conducted by ALJs.

153. Alascom's argument is not supported by the language of either Section 410 or any other law, including the APA. Section 410 itself does not prohibit *ex parte* presentations but merely states that joint boards have the same powers, duties, and obligations as ALJs. Although ALJs are subject to the APA, nowhere in the APA is there a duty or obligation imposed on an ALJ not to receive *ex parte* presentations under any circumstance. Rather, the APA *ex parte* prohibitions, 5 U.S.C. 557(d)(1), apply only in those proceedings "required by statute to be determined on the record after opportunity for an agency hearing * * *." 5 U.S.C. 553(c), 554(a). The Supreme Court has strictly applied the requirement that this language (*i.e.*, "on the record after opportunity for an agency hearing") be present in the statute under examination to trigger the hearing provisions of the APA. See *U.S.* v. *Florida East Coast Railway Co.*, 410 U.S. 224, 234–38 (1973); see also *AT&T* v. *FCC*, 572 F.2d 17, 22 (2d Cir.) *cert. denied*, 439 U.S. 875 (1978). Section 410 of the Communications Act does not contain this required "on the record" language, or anything remotely resembling it. In addition, Section 410(a) expressly provides that proceedings conducted under that section shall be conducted "in such manner as the Commission shall * * * prescribe."[194] It is thus apparent that the Section 410(a) language concerning "duties and obligations" of joint boards was not intended to dictate the procedural requirements of joint board proceedings.

154. Moreover, as discussed below, the legislative history of Section 410 confirms that Congress did not intend the language quoted by Alascom to require "on the record" joint board hearings with the associated *ex parte* prohibitions. Rather, the legislative history indicates that the references to ALJs in Section 410 were intended simply to limit the joint board's authority to the issuance of "recommended" decisions and thereby to protect the authority of the Commission to issue a final decision.

155. By way of background, in its original form prior to 1952, section 410(a) provided that joint boards "shall be vested with the same powers and be subject to the same duties and liabilities 'as in the case of a member of the Commission when designated by the Commission to hold a hearing (under section 409).'" See H.R. Rep. No. 1750, 82d Cong., 2d Sess., reprinted in 1952 U.S. Code Cong. & Ad. News 2234, 2255. In 1952, however, Congress amended section 409 and abolished the former procedure whereby single commissioners could preside over cases designated for hearing. In an attempt to conform section 410(a) to the new requirements of section 409, Congress concurrently amended section 410(a) to provide that joint boards "shall have all the jurisdiction and powers conferred by law *upon the Commission*, and shall be subject to the same duties and obligations." *See id.* (emphasis added).

156. From the Commission's perspective, this delegation of authority proved "undesirably broad" and the Chairman of the FCC advised Congress in 1955 that "it does not seem likely that the Commission would ever find it desirable (under the language of the 1952 amendment) to refer any matter to a joint board." See H.R. Rep. No. 2540, 94th Cong., 2d Sess., reprinted in 1956 U.S. Code Cong. & Ad. News 4134, 4139. The Chairman requested that Congress change the statutory language to give joint boards the same jurisdiction that is conferred on a hearing examiner, which "would be more nearly what Congress must have intended and would make the section more usable to the Commission in the administration of the act." Congress granted this request and in 1956 amended section 410(a) to give joint boards "the same power as is now conferred on hearing examiners, *thus giving the full Commission an opportunity to act before a final determination is made in a particular case referred to a joint board.*" *Id.* at 4134 (emphasis added). The legislative history thus indicates that Congress amended section 410(a) of the statute to

[189] Alascom Comments (July 12, 1993) at 56–59.

[190] See, e.g., PTI Letter of November 10, 1992 addressed to the State Joint Board Commissioners; Alascom Request for Supplementation of Record (June 15, 1993); Alascom Comments (July 12, 1993) at 59–61.

[191] PTI Letter of November 10, 1992 addressed to the State Joint Board Commissioners; Alascom Comments (July 12, 1993) at 59–62).

[192] Alascom Request for Supplementation of Record (June 15, 1993); Alascom Comments (July 12, 1993) at 61.

[193] *Integration of Rates and Services for the Provision of Communications by authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, CC Docket No. 83–1376, Notice of Proposed Rulemaking, FCC 85–520, paras. 2, 25 (released Sept. 27, 1985), 50 Fed. Reg. 41714 (1985). The order establishing the Alaska Joint Board stated that the proceeding would be subject to non-restricted *ex parte* procedures. It is unclear why Alascom waited eight years to object to this decision.

[194] In this regard, the Commission's rules provide that Joint Board proceedings are generally subject to non-restricted *ex parte* procedures. 47 CFR 1.1206(b)(10).

make clear that a joint board cannot take final action and that it acts essentially in an advisory capacity to assist the Commission.

157. This interpretation also is supported by the express language of Section 410(c), added by Congress in 1971, providing for mandatory referral to a joint board concerning matters pertaining to jurisdictional separations and discretionary referral for any other matter relating to common carrier communications of joint federal-state concern. As noted above, section 410(c) provides that joint boards established under that section "shall possess the same jurisdiction, powers, duties, and obligations as a (section 410(a) joint board), *and shall prepare a recommended decision for prompt review and action by the Commission.*" 47 U.S.C. 410(c) (emphasis added). See also S. Rep. No. 362, 92d Cong., 1st Sess., reprinted in 1971 U.S. Code Cong. & Ad. News. 1511, 1514 ("As in section 410(a) of the act, the proposed section 410(c) would provide that the joint board's decision is the equivalent of an examiner's opinion in that it would prepare a recommended decision for prompt review and action by the Commission."). Again, the emphasis is on precluding a joint board's ability to take final action, rather than mandating formal adjudicative procedures.

158. Further, nowhere in the legislative history is there any indication, either expressed or implied, that Congress intended to mandate that joint boards conduct formal proceedings subject to restricted *ex parte* procedures. To the contrary, the legislative history to the enactment of section 410(c) evidences a congressional understanding that joint board proceedings would be conducted as informal, notice and comment rulemaking proceedings, not as APA on-the-record proceedings. After referring to a previous FCC federal-state joint board conducted as an informal rulemaking, the Senate Report indicated that the 1971 amendments "would make mandatory the procedures voluntarily followed in the prior joint board proceeding." *Id.* at 1514. The legislative history then explicitly indicated that joint board referrals under section 410(c) would follow "once the Commission institutes a notice of proposed rulemaking proceeding * * *." *Id.* at 1515. Consistent with this approach, the Commission generally treats joint board proceedings as informal notice and comment rulemakings. See 47 CFR 1.1206(b)(10) (1992); Amendment of Subpart H, Part 1 of the Commission's Rules and Regulations Concerning Ex Parte Communications and Presentations in Commission Proceedings, 2 FCC Rcd 6053, para. 17 (1987) (52 FR 37458, October 7, 1987) ("Joint Board proceedings ordinarily are in the nature of rulemakings and therefore follow generally the non-restricted *ex parte* rules.").

159. It is thus abundantly clear that section 410 of the Communications Act and the APA do not require use of restricted *ex parte* procedures for joint board proceedings. Moreover, this proceeding is not one that would require a formal, evidentiary hearing with restricted *ex parte* procedures as a matter of "basic fairness." See *Sangamon Valley Television Corp.* v. *USA*, 269 F.2d 221, 224 (DC Cir. 1959). While Alascom asserts that the proceeding implicates "conflicting private claims to a valuable privilege," *id.*, this is not the case. Rather, the proceeding involves a determination of the future market structure for Alaska telecommunications in which multiple competitors will be free to enter and exit the market. In making its recommendations to the Commission, the Joint Board must balance various policy considerations that affect numerous parties in the interstate market. Even though the recommendations include termination of the JSA and a transitional payment, which is necessary to accomplish certain policy goals, the proceeding cannot be characterized as involving competing claims to a valuable privilege.[195]

160. In sum, the Joint Board's use of informal notice and comment rulemaking procedures is fully in accord with the law.

2. Compliance with Ex Parte Procedures

(a) November 1992 meetings. 161. Alascom claims that various meetings among the Joint Board State Commissioners and individual parties held in November of 1992 would violate the FCC's *ex parte* rules unless each *ex parte* meeting was memorialized in the record and public comment could be made on each such record.[196] A similar issue was raised in Alascom's June 15, 1993, Request for Supplementation of Record.

162. Alascom's arguments are without merit because the Joint Board State Commissioners and Staff complied with the Commission's *ex parte* procedures. Section 1.1206 of the Commission's rules prescribe requirements that govern *ex parte* contacts. Oral *ex parte* contacts are permissible, provided that any data or arguments not already in the record are submitted in writing for the record. The public record establishes that the *ex parte* rules were followed in the conduct of the November, 1992 meetings at issue. Three of the four State Joint Board Commissioners and various State Staff collectively conducted separate meetings with representatives of Alascom, AT&T, GCI and the State of Alaska. At the commencement of each meeting, the Joint Board members reminded each party of its responsibilities under the rules to submit a summary of the discussion for the record. The public record reveals that each party complied in fact with the rules and submitted a summary.[197]

(b) Overland Consulting, Inc's. participation and compliance with the Ex Parte rules. 163. In its July 12, 1993, Comments on the Tentative Recommendation, Alascom argues that a private presentation by Overland to the State Commission Members and Staff of the Joint Board at the Seattle meeting in July 1992 constitutes an *ex parte* rule violation. Alascom stated its belief that Overland was hired by the State of Alaska, a party to the proceedings. Alascom alleges that neither the fact nor substance of this meeting is reflected in the record, as required by the Commission's rules. Alascom also asserts that the Memorandum of Principles reflecting the State Members' views, issued after the Seattle meeting, indicates that Overland's report influenced the State Members.[198]

164. Alascom's argument rests on its belief that Overland is working for the State of Alaska. However, this fundamental assumption is incorrect. A review of Attachment 10, the Request for Proposal governing Overland's contractual responsibilities, reveals the following:

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[195] In addition, subsequent to *Sangamon Valley*, the Supreme Court admonished the courts not to force an agency to provide procedures more demanding than those required by statute or the Constitution absent "extremely compelling circumstances." *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 543 (1978). Such circumstances do not exist here.

[196] PTI Letter of November 10, 1992 signed by Alan Y. Naftalin addressed to the Joint Board State Commissioners. See also Alascom Comments (July 12, 1993) at 62.

[197] State of Alaska *Ex Parte* Meeting Report of November 16, 1992 (November 23, 1992); AT&T Report of *Ex Parte* Meeting of November 16, 1992 (November 18, 1992); Alascom *Ex Parte Report* of November 16, 1993 (November 20, 1993); GCI *Ex Parte Report CC Docket 83–1376*, of November 16, 1993 (November 17, 1993).

[198] Alascon expressed similar concern in a letter addressed to Lorainne Kenyon, dated July 14, 1993, which was sent in response to her letter of July 8, 1993, which transmitted additional data requests related to Alascom's June 7, 1993 Implementation Plan.

1. The contract solicitation was issued by the APUC, which is a division of the Department of Commerce and Economic Development. RFP, p. 5, no. 1.

2. The purpose of the contract was for "[s]ervices of a contractor to aid the APUC in its investigation of the interstate issues associated with the Master Agreement * * * and [t]he contractor shall analyze and makes recommendations concerning * * * the issues before the CC Docket No. 83–1376 Joint Board." *Id.*

3. The issuing office of the RFP is the APUC. RFP at 6.

4. The scope of work required under the contract was anticipated to be supplementary to staff analysis:

"Between now and the time that a contract is signed, Staff will be initiating its investigation and may well complete segments of the Scope of Work identified in this RFP. As a consequence, depending upon when a contract is reached, portions of the consultant's Scope of Work may no longer be necessary or may be reduced to reviewing or enhancing Staff's work." RFP at 24, no. 2t.[199]

165. Based on these provisions of the RFP, it is clear that Overland is working to assist Commissioner Knowles in her capacity as a member of this Joint Board, not for the State of Alaska. While obviously the APUC is part of the State of Alaska, there is a very significant distribution between the APUC's participation on the Joint Board and the State's participation as a party before the Joint Board. If the State of Alaska's and the APUC's interests were one and the same, there would be no reason for the State of Alaska to submit pleadings before the Joint Board since a member of the APUC (Commissioner Knowles) sits on the Joint Board. While Commissioner Knowles does not officially represent the view of the APUC on the Joint Board, it is significant to note that, other than two letters from its Chairman, the APUC has not filed pleadings in the Joint Board proceeding other than the initial Petition for Rulemaking that formed the basis for the FCC's initiation of a Notice of Inquiry regarding Alaska market issues. See Notice of Inquiry, CC Docket No. 83–1376, 96 FCC 2d 567 (January 4, 1984). Also significant is the fact that the initial Petition was filed by both the State of Alaska and the APUC, which clearly shows that these entities view themselves separately.

166. Additionally, Overland's work has been supervised by Commissioner Knowles and APUC Joint Board staff in their Joint Board capacities, not as employees of the State of Alaska or the APUC. This relationship was confirmed by the APUC Chairman in recent correspondence, which stated that "Overland was hired by the Alaska Public Utilities Commission to assist Commissioner Knowles and staff member Lorraine Kenyon *to perform their official duties with the Alaska Joint Board.*"[200]

167. The scope of work described in the RFP as quoted above in Point No. 4 demonstrates that Overland's work pursuant to the contract is the functional equivalent of State Joint Board staff, since the scope of Overland's work was contemplated by the RFP to be coordinated with State Joint Board staff work.

168. Since Overland was not representing an interested party to this proceeding, the Joint Board State Commissioners and Overland were free to meet and were not required to make an *ex parte* filing for the meeting. We note, however, that Overland's principal work product was a report dated July 21, 1992, which was entered into the public record of CC Docket 83–1376.

3. Applicability of the Sunshine Open Meeting Requirement to Joint Board

169. Alascom has challenged various meetings among Joint Board Commissioners that were closed to the public as violative of the open meeting requirement of the Government in the Sunshine Act. This challenge was raised with respect to the convening of meetings in Seattle among some of the Joint Board State Commissioners in July of 1992; meetings in Chicago of the four Joint Board State Commissioners and State Staff in October of 1992; meetings in Los Angeles among some of the Joint Board State Commissioners in November of 1992; and meetings in Washington, DC among some of the Joint Board Commissioners in February of 1993.[201]

170. The Alaska Joint Board is comprised of four State members and three FCC Commissioners. Alascom argues that the fact that a quorum of the Joint Board (the four state members) met privately on several occasions violates the Government in the Sunshine Act.

171. We note initially that discussions at which a quorum of FCC commissioners are present constitute an FCC "meeting" under the Sunshine Act if the discussions are "sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency." *FCC* v. *INT World Communications, Inc.*, 466 U.S. 463, 471 (1984) (quoting R. Berg & S. Klitzman, An Interpretive Guide to the Government in the Sunshine Act 9 (1978) ("Interpretative Guide")). Thus, with respect to any meeting of the full Alaska Joint Board in which specific proposals or recommendations concerning the Alaska market are discussed, or any such meetings among Joint Board members in which three FCC commissioners are present, the Sunshine Act requires advance notification and the opportunity for public observation. Alascom has not alleged that any such non-public meetings occurred.

172. As to whether the Sunshine Act governs meetings of State Joint Board members constituting a quorum of the Joint Board when less than a quorum of FCC commissioners are present, we find that such meetings are not subject to the open meeting requirements of the Sunshine Act. While the Sunshine Act requires that any "meeting of an agency" be open to the public, 5 U.S.C. 552(b), we conclude that the discussions at issue were not "meeting[s] of an agency" governed by that Act.

173. The term "agency," for purposes of the Sunshine Act, means "any agency * * * headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency." 5 U.S.C. 552b(a)(1). The term "meeting" means "the deliberations of at least the number of individual agency

[199] Alascom's Comments (July 12, 1993).

[200] Letter of July 22, 1993 addressed to Mr. John R. Ayers (emphasis supplied). This letter was submitted by Alascom to the public record in this proceeding by cover letter dated August 11, 1993. Although Alascom suggested that this correspondence bolsters its challenge to Overland's role in this proceeding, we disagree. We know of no prohibition, nor is one cited by Alascom, against one of the Joint Board State Commissioner's retention of consulting services to supplement staff analysis of the complex issues in this proceeding. Further, we reject Alascom's unsupported suggestion that the APUC's funding of this activity, rather than payment by the Commission, was somehow inappropriate. As noted above, the APUC hired and paid for a consultant to assist Commissioner Knowles without the authorization or assumption of any financial obligation by the Commission. Thus, Overland's compensation hardly qualifies as the type of expense item subject to Commission allowance and reimbursement under Section 410(a) of the Communications Act. Moreover, the APUC's payment for these services to Commissioner Knowles cannot be characterized as the indirect satisfaction of a governmental function that, in any measure, augmented the Commission's budget.

[201] PTI Letter of November 10, 1992, signed by Alan Y. Naftalin addressed to the Joint Board State Commissioners; Alascom Comments (July 12, 1993) at 59–60.

members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business." 5 U.S.C. 552b(a)(2). Finally, the term "member" means "an individual who belongs to a collegial body heading an agency." 5 U.S.C. 552b(a)(3).

174. The statutory language makes clear that to be considered a "meeting" of the agency, there would have to be deliberations of individuals belonging to the collegial body heading the agency, *i.e.*, FCC commissioners. See *Hunt* v. *NRC*, 611 F.2d 33 (10th Cir. 1979). Most of the meetings referenced by Alascom included no FCC members and thus were not "meetings of the agency."

175. Although not raised by Alascom, we note that some FCC commissioners did attend two of the gatherings of the State members of the Joint Board mentioned by Alascom in their pleading. At one of these sessions two FCC commissioners who are members of the Joint Board independently made very brief appearances at the beginning but left before substantive discussions commenced. They did not participate in any way in deliberations of issues before the Joint Board and, thus, consistent with the definition of meeting, the open meetings requirement of the Sunshine Act did not apply.

176. There has been only one session involving the State Joint Board members where an FCC commissioner who is a member of the Joint Board attended and engaged in substantive discussions. We do not believe a session attended by only a single FCC Commissioner can be deemed "deliberations of" a "number of individual agency members" within the meaning of the term "meeting." Further, this one FCC Commissioner could not have been in the position to determine the "joint conduct or disposition of official agency business," 5 U.S.C. 552b (a)(2), as the term "joint" necessarily implies the presence of more than one member of the Commission. Accordingly, we conclude that no Sunshine Act violation occurred.[202]

4. The Anchorage Public Hearing

177. On July 1, 1993, the Joint Board conducted a hearing in Anchorage in which interested persons, most especially Alaska residents, were permitted to make presentations regarding the proposals under consideration by the Joint Board. The federal and state commissioners participated in person and via satellite and telephone link-up. Alascom alleges that the Commission violated its own rules by failing to provide written notice to the parties of the Alaska proceeding regarding this public hearing and by failing to publish public notice of the meeting in the **Federal Register** until the day of the hearing.

178. Section 1.423 of the Commission's Rules, 47 CFR 1.423 (1992), states that when the Commission requests oral argument in a rulemaking proceeding, it shall give written notice to the parties and publish notice in the **Federal Register**. As an initial matter, since this was a Joint Board hearing, not a Commission hearing, it appears that the rule is not applicable and that no violation occurred. But, to the extent the rule may be viewed as applying since all FCC commissioners were present, it is not apparent what injury Alascom has suffered. It had actual notice of the meeting—indeed, an Alascom representative made a presentation at the July public hearing. To the extent a violation of § 1.423 occurred, it is difficult to construe it as anything more than harmless error, particularly given that reply comments to the hearing were permitted until July 12, 1993, and *ex parte* presentations were permitted thereafter.

VIII. Ordering Clause

179. Accordingly, pursuant to the authority contained in section 410 of the Communications Act of 1934 As Amended, *it is ordered that*, this Final Recommended Decision be transmitted to the Federal Communications Commission.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–29185 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

[202] In our view, the three FCC commissioners on the Joint Board also are not a subdivision of the Commission. A subdivision must be "authorized to act on behalf of the agency." 5 U.S.C. 552b(a). That requirement is not met since only the full Joint Board (of which the FCC commissioners are a minority) is authorized to make recommendations to the Commission and only the full Commission can act on those recommendations. Nor is the Joint Board a subdivision of the Commission, as it is not a subdivision of the "collegial body." See 5 U.S.C. 552b (a) (1); *Hunt* v. *NRC*, 611 F.2d at 336 n.2.

FEDERAL HOUSING FINANCE BOARD

Public Reading Room

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) announces that it has established a Public Reading Room (Reading Room) with an operational effective date of December 1, 1993. The Reading Room at 1777 F Street, NW., room 103, Washington, DC 20006, will be a repository of all Finance Board's public documents. The Reading Room will be open to the public from 9 a.m. to 12 p.m. (noon), Monday–Friday. The telephone number is (202) 408–2969.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–29407 Filed 11–30–93; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

[Docket R–0817]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed service enhancement.

SUMMARY: The Board is requesting comment on a proposal to expand the Fedwire funds transfer format and adopt a more comprehensive set of data elements. The Board is proposing implementation of the new format by late 1996. An expanded Fedwire funds transfer format would improve efficiency in the payments mechanism by reducing the need for manual intervention when processing and posting transfers. Further, truncation of payment-related information would be minimized when forwarding payment orders through Fedwire that were received via other large-value transfer systems, such as the Clearing House Interbank Payments Systems (CHIPS) and Society for Worldwide Interbank Financial Telecommunication (SWIFT). A more comprehensive set of data elements would also permit the inclusion of more complete name and address information for all parties to a transfer, which would be required under regulations proposed by Treasury (58 FR 46021, Aug. 31, 1993). The Board is also requesting comment on the benefits and costs to depository institutions, to their customers, and to the overall payments mechanism of expansion of the Fedwire funds transfer format.

DATES: Comments must be submitted on or before February 28, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0817, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington,

DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street NW. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Gayle Brett, Manager (202/452–2934), or Sandra Scales, Financial Services Analyst (202/452–2728), Division of Reserve Bank Operations and Payment Systems. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The majority of large-dollar electronic funds transfers between financial institutions in the United States flow over the Federal Reserve's Fedwire funds transfer system and the Clearing House for Interbank Payments System (CHIPS). In 1992, the combined daily average volume of these systems exceeded 420,000 transfers with a value exceeding $1.7 trillion. A significant number of the transfers sent over these payment systems are based on payment instructions received over a message switching system operated by the Society for Worldwide Interbank Financial Telecommunication (SWIFT).

From time to time, the format used to transmit payment orders on Fedwire has been modified to accommodate industry demands for the adoption of standards that facilitate end-to-end computer processing. While these changes provide a more consistent data structure, technical limitations at that time prohibited the Federal Reserve from significantly expanding the field sizes in response to industry requests.[1]

SWIFT serves 3,000 institutions worldwide and uses a comprehensive format for the transmission of information between its members. This format is designed to facilitate end-to-end computer processing and provide sufficient space to communicate all the payment-related information needed by its members to process the payment instruction. Payment orders sent on SWIFT map easily to both Fedwire and CHIPS; however, initial field length limitations on both the CHIPS and Fedwire systems required the manual truncation of some vital payment information.

In 1992, CHIPS adopted a new format that incorporated certain aspects of the SWIFT format to decrease the need to truncate payment-related information and significantly improve the ability of receiving institutions to process payments for their customers. As a result, payment instructions sent over SWIFT can be processed efficiently on CHIPS without manually truncating information that the receiver may need to identify and process the payment.

In November 1992, the American Bankers Association (ABA) Funds Transfer Task Force, under the auspices of the ABA Wholesale Operations Committee (the Committee), recommended that the Federal Reserve adopt a more comprehensive set of data elements for wholesale electronic funds transfers, and forwarded to the Federal Reserve a proposal for a new Fedwire format. The Committee recognized that adoption of a new format would not be a simple undertaking, but stated it to be essential to the long-term efficiency and productivity of the U.S. payments mechanism. Further, the Committee recognized that a revised, "CHIPS-like" Fedwire format would enhance compatibility with the SWIFT and CHIPS formats.

Federal Reserve staff conducted a detailed business analysis of the format proposed by the ABA and evaluated requests to modify the existing format from the Departments of Justice and Treasury. The results of that analysis indicate that the proposed format would more fully accommodate the business needs of the banking community as well as the requests of law enforcement agencies for more complete information about the parties to a funds transfer. Further, the proposed format is not expected to cause any degradation in service, and its incorporation into the Fedwire funds transfer service seems justified.

The Board proposes to adopt a new format for the Federal Reserve's Fedwire funds transfer service, recognizing that the payments system would be more efficient if all large-value transfer services used a common format structure that accommodates industry and law enforcement demands for increased information in messages. The proposed format is substantially similar to the CHIPS-like format proposed by the ABA, but with minor modifications to accommodate certain Fedwire business and technical specifications.

The Board proposes to implement the expanded format by late 1996. The adoption of the format will require extensive automation development work on the part of the Federal Reserve Banks. Also, depository institutions using in-house or vendor-supplied funds transfer systems will need to make significant automation changes to send and receive the new format. The Federal Reserve recognizes that many large depository institutions today use vendor-provided or in-house developed software to participate in CHIPS and SWIFT. Because these institutions are familiar with formats similar to the one proposed for Fedwire and have already adopted interfaces with internal systems to accommodate these similar formats, it is assumed that the conversion effort for these institutions will be somewhat reduced.

The Federal Reserve provides software to approximately 7,500 depository institutions that access Fedwire through Fedline®.[2] Fedline® institutions would be somewhat less affected as the Fedline® software enhancements required to implement the proposed format would be provided by the Federal Reserve Banks. Fedline® participants will require substantial education and training to become familiar with the new format. Those institutions with back-office systems that interface Fedline® may need to modify such systems to support the new format.

Usefulness to Law Enforcement

On August 31, 1993, the Treasury requested comment on a proposed regulation that would require financial institutions to include certain information in payment orders that they send (58 FR 46021, Aug. 31, 1993) (the "travel rule"). Law enforcement agencies have indicated that the inclusion of complete transfer party information in the payment order will be particularly useful in tracing the proceeds of illegal activities and will assist in identifying and prosecuting individuals involved in such illegal activities.

Although there is insufficient space in the current Fedwire format to include complete originator and beneficiary information, the Board encourages Fedwire users to use available optional format fields to include such information. For example, in a third-

[1] The structured Fedwire format was announced in 1986 when most Fedwire participants used the BOPEAP telecommunications protocol to connect to the Federal Reserve. BOPEAP inherently limited the number of characters a message could contain. The final BOPEAP link was converted to the more advanced FRISC and FLASH telecommunications protocols in 1991.

[2] Fedline® is the Federal Reserve's proprietary software package for personal computers that is used by low-to-medium volume Fedwire participants to electronically access Federal Reserve services.

party transfer, the originator (ORG=) and beneficiary (BNF=) fields must contain data in order to be accepted by Fedwire. While these fields can accommodate the originator and beneficiary name and account number, there is generally insufficient space for address information. If optional fields, such as the "Originator to Beneficiary Information" (OBI=) or "Bank to Bank Information" (BBI=) fields, are not used for payment-related information, these fields could be used to convey the address information. No specific optional field is recommended for including address information as different optional fields may be available for use in any given wire transfer.

The Board recognizes that these recommendations may not assist depository institutions in complying with the travel rule in all cases. Ideally, the Fedwire funds transfer format should provide sufficient space to accommodate the information desired for law enforcement purposes. In addition to increasing the space available for transfer party information, the proposed Fedwire format is much more structured and specific about where information is carried in the message.

A detailed description of the proposed format and examples of usage for business and law enforcement purposes are included following the description of the proposed alternative implementation plans. A complete list of field tags and a glossary of terms and field tag definitions are attached to this notice. A detailed technical description of the proposed format that includes a comparison to the current format, as well as a summary of format differences, will be made available upon request from the local Federal Reserve Bank to persons with a need to know the specifications that are willing to sign a confidentiality agreement to protect the integrity of the Fedwire system. This information may be useful for computer interface banks and vendors as they analyze the effects of the format.

Description of Alternative Implementation Plans

The Board proposes that the Federal Reserve Banks will fully implement the expanded format by late 1996. This should allow sufficient time for the Federal Reserve to make necessary changes to both the Fedwire funds system and Fedline® software, and for the industry to incorporate and fully test the software changes that must be made to the funds transfer, communications, customer delivery, and back-office processing systems used by depository institutions that connect to Fedwire.

The Federal Reserve System is currently in a period of transition, migrating from twelve separate payment processing sites into one consolidated automation site. This consolidation involves significant software, hardware, network, and computer operations changes; the related application and operating system software will be in a state of transition until 1995. The adoption of the proposed format requires revision of many programs and databases that comprise the core of the Fedwire funds transfer system. The Fedwire funds transfer software that will be used in the automation consolidation environment will be implemented by all Reserve Banks by early 1995. Assuming that a final format is adopted in mid-1994, the Federal Reserve System would expect to complete software development efforts and internal testing of the revised Fedwire software in late 1995, at which time the depository institution testing phase could begin. An update of the computer interface protocol specifications (CIPS) document, which details software and technical requirements, and installation and certification testing guidelines would be published six months prior to the time software would be made available for testing.

The testing phase for computer interface depository institutions would encompass two steps: Software certification and implementation testing. Fedline® software would be certified by the Federal Reserve prior to its distribution to depository institutions. Vendors and depository institutions that have developed in-house computer interface funds transfer systems would be required to certify their software by demonstrating that their software will accommodate the new format. All computer interface depository institutions will be required to successfully complete pre-production implementation tests, that is, tests that simulate a normal processing day and demonstrate that they can meet all of the CIPS requirements.

Three different implementation cutover strategies are discussed below. The Board welcomes comments as to the viability to each plan and anticipated effects on and benefits for depository institutions. The alternatives under consideration include: (1) A nationwide same-day cutover, (2) a "receive-first" phased conversion, and (3) an "institution-by-institution" full function conversion.

Alternative one—All participants cut over on the same day. Under this strategy, transition from the current format to the expanded format would be accomplished over a three-day, bank holiday weekend when both the financial markets and the Federal Reserve are closed. Such a plan requires substantial coordination and testing between the depository institutions and the Federal Reserve Banks. It is anticipated that a same-day transition period would significantly reduce participants' costs because the need to support two formats simultaneously is removed. This plan allows all participants simultaneously to take advantage of the benefits of an expanded format, including the ability to automate more fully incoming transfer processing and message mapping between transfer systems.

Under a same-day cutover, the Federal Reserve recognizes there could be a substantial disruption to the payments system if one or more large participant(s) were unable to process under the new format or experienced some other implementation-related problem that caused a prolonged outage of the Fedwire funds transfer service. Complete and comprehensive testing on the part of every on-line institution, both internally and with the Federal Reserve is required for a conversion of this magnitude to be successful. A long lead time is necessary to ensure that software is thoughtfully designed and fully tested by both the Federal Reserve and on-line participants.

A same-day cutover requires every depository institution that participates on Fedwire using an on-line connection to bring new or substantially modified software into the production environment for the first time on the same date. Due to the magnitude of the software changes and the large population of participants, in excess of 11,000 depository institutions, it would not be feasible to fall back to the previous software if problems during cutover were encountered. It would be impossible to coordinate the time de-installation and re-installation of software and related procedural changes for more than 11,000 institutions. Instead, the affected participants would have to quickly repair, test, and recover their new software. In the interim, the payments system could be severely hampered for one or more days. Although there is a significant amount of risk associated with this implementation plan, a successful implementation would allow all participants simultaneously to take advantage of the increased efficiency

and effectiveness afforded by the new format.

Alternative two—A two-stage implementation, with each stage lasting four to six months. Under this plan, participants would begin receiving the new format before they would begin sending the new format. Messages sent in the current format would be converted to the new format by Fedwire, then delivered.

Phase one, a transition period during which participants convert from receiving the current format to receiving the new format, would commence during the late 1995 to early 1996 time frame. In this phase, Fedwire software would accept only the current format but would deliver in the format the receiver was capable of processing. That is, until a receiver is capable of receiving the new format, all messages would be delivered to the receiver in the current format. Once the receiver is able to receive the new format, Fedwire would convert and deliver messages to that receiver in the new format. The Fedwire funds software would convert the message by mapping the information in the current format to the equivalent fields in the new format. As the field lengths in the new format are equal to or larger than the current format, all transfer information would be carried forward without truncating any data. The "new format" message will contain only the fields necessary to carry forward all the information in the "old format" message. The converted message would be somewhat longer than the original message because information commingled in the third-party section of the current format would be allocated to specific fields in the new format and every field would include a tag. At the end of phase one, all participants would be required to have the ability to receive the new format.

Phase two, a transition period during which participants convert from sending the current format to sending the new format, would commence in mid-1996. In this phase, Fedwire software would continue to accept the current format, but would also accept the new format. All messages would continue to be delivered to the receiver in the new format. Until a sender begins sending the new format, Fedwire will continue to accept the sender's messages and convert them to the new format for delivery to the receiver. Phase two would end in late 1996, at which time all participants would have the ability to both send and receive the new format. The current format would no longer be supported.

The receive-first alternative limits the risk that the overall payments system would experience a major disruption on a particular day as very few banks would go through the transition on any given day. Separating the conversion along functional lines also helps minimuze the risk to the payment system. A participant that experiences severe implementation-related problems on its receiving cutover date would still be able to inquire against balances and originate transfers, thus retaining access to funds that had been credited to its account. If the bank's receiving problems were not readily resolved, the bank would have the option of reverting to the previous software or moving to a back-up system. A participant that experiences problems on its sending cutover date would still be able to receive transfers and thus monitor its account balance. If the bank's sending problems are not readily resolved, the bank has the option of reverting to the previous software or moving to a back-up system.

Alternative three—Each bank selects a date over the course of twelve months on which to covert both its send and receive functions to accommodate the new format. The transition period would begin in late 1995. Under this plan, Fedwire would accept messages in either format and map between formats. All participants would be required to complete conversion to the new format within the twelve-month transition period, after which time the current format would no longer be supported.

Under the institution-by-institution full function conversion, participants would implement the new format on a staggered schedule. As a result, a participant may send a message in a format that the receiver cannot process. In this case, Fedwire will convert the message to a format that the receiver can process. For example, if the receiver were able to accept the new format, then messages originated in the old format would be mapped into the new format. Fedwire would convert the field tags and identifier codes to the equivalent fields in the new format. If the receiver was still processing the current format, then messages received in the new format would be reduced to the current format; however, critical payment related information may be truncated. That is, if the sending bank included more information in a field than the equivalent field in the current Fedwire format could accept, the extra characters would be omitted from the message delivered to the receiver. Truncation would be necessary because the new format allows a sender to include up to three times as much payment related information as the current format. In some cases, data truncation could be very extensive. When mapping from the new format to the old format, Fedwire would establish a set of interim field length guidelines for truncating data. Fedwire would automatically apply these guidelines when mapping messages from the new format to the current format. If a sender included more text than allowed by the guidelines, the excess characters in each field would be truncated.

Adoption of this alternative would reduce the likelihood of a major payment system disruption because very few banks will go through the transition on any given day; however, business risk may be increased. The data truncation necessary to support the staggered-date conversion schedule also would delay a participant's ability to take full advantage of the benefits of the new format until all participants have converted. In the interim, a sender using the new format would need to be aware that a receiver may not use the new format. It is unlikely that most participants would choose to track which intended receiver was using the new format, so a sender would need to limit the size of all messages or risk truncation of critical payment data prior to delivery to "old format" participants. Because messages sent in the new format may exceed the interim field length guidelines and critical payment information may be lost in the truncation process, there would be an increased business risk for all receivers that use the old format. The receiver that converts late in the process has an increased risk of misapplying payments and incurring posting delays because most of the wires it receives would have been originated under the new format and information required to fully identify the beneficiary or describe the terms of payment may have been truncated prior to delivery.

There also may be more risk to the individual participant because both the send and receive functions convert on the same date. It is conceivable that a participant experiencing severe implementation-related problems on its cutover date could experience a complete loss of function because both send and receive functions are in a state of transition at the same time. Thus, all the institution's normal capacity to monitor and adjust its account may be disrupted, including the ability to inquire against balances, originate transfers, and receive notification that funds had been credited to its account. In that case, a bank may be compelled to revert to previous software or back-up systems at an earlier point than if

some degree of monitoring capability were retained.

Description of the Proposed Fedwire Format

The proposed Fedwire format includes a comprehensive set of the elements commonly used in the origination and receipt of payment orders. It is similar to the CHIPS and SWIFT formats and provides an expanded message length and variable-length fields. The proposed format is modeled on the CHIPS format and only different when necessary to accommodate technical processing requirements specific to Fedwire or to delete technical processing requirements specific to CHIPS. Additional fields have been defined, and the fields that carry payment details are larger than those in the current Fedwire format. The larger fields permit the inclusion of more complete information about the parties to a transfer and allow space for additional payment information. There is adequate space to provide the name, account number or other identifying number, and three lines of address information for each party to the transfer, including the originator, originator's bank, beneficiary, beneficiary's bank, intermediary bank [3] and instructing bank.

The proposed format differs from the current Fedwire format in several significant ways: messages are not required to be fixed length but may vary in length; maximum message length is significantly expanded; the number and size of fields has significantly increased; and field tags (codes that identify the type of information a field may carry) are numeric rather than alpha. Numeric tags are used because they are more flexible than letter groupings and they facilitate the mapping of information between transfer systems. The format is highly structured—a field tag is used to designate the contents of every field in the message. Together, these changes provide the ability to fully and consistently translate payment order information into discrete fields, which will permit Fedwire participants to automate more fully payment order processing.

The presentation of routing and transfer information in the proposed format has been reorganized to follow more closely the path of a message, that is, from sender to receiver. The proposed format presents the sending bank routing number and sending bank name before the receiving bank routing number and receiving bank name. The proposed format also reorganizes transfer party information, presenting the flow of funds and information from the perspective of the receiver. That is, the intermediary bank, beneficiary bank and beneficiary information fields precede the originator, originating bank, and instructing bank information fields. The proposed format's presentation of routing and transfer party information is consistent with the presentation of similar data in the CHIPS and SWIFT formats. Consistency among these formats should facilitate investigation and resolution when errors occur.

The proposed format can accommodate much longer messages than the current Fedwire format. For example, outgoing messages, those originated by a depository institution and received into Fedwire, may contain a maximum of 1731 characters, as compared to a maximum of 604 characters under the current Fedwire format. Intercepts, messages returned to the sending depository institution by Fedwire, may contain a maximum of 1834 characters, as compared to 731 characters today. Incoming messages, those delivered by Fedwire to a receiving depository institution, may contain a maximum of 1808 characters in the proposed format, as compared to 723 characters today. Message length varies due to the information appended during processing by the Federal Reserve.

Field size has been increased and the field structure has changed under the proposal. Each field has two parts: a tag that identifies the type of information a field may carry, and elements that identify the specific piece of data within the field. The field tag must be one of the numeric codes specifically designated for that purpose and the elements must be depicted in a specific order within the field. In general, elements are pieces of information that commonly follow a particular field tag, including but not limited to identifying information such as name, address, and account numbers. Each element has a designated position within the field. Valid elements are defined for each field tag. For example, the originator field has a "field tag" of [5000] that would be followed by the "elements," such as account number, name and address.

The number of field tags is greatly expanded and incorporates the complete set of payment related tags utilized by the current Fedwire format. The alpha tags in the current Fedwire format have been translated into numeric codes in the proposed format. For example, the beneficiary information field tag, denoted by BNF= in the current format, is tag [4200] in the proposed format. (Appendix A lists the complete set of field tags and the Glossary provides field tag definitions.) Additional field tags have been defined to denote each of the standard fields in a message, including routing and technical information. For example, the IMAD (Input Message Accountability Data), which is assigned to a specific field position in the current Fedwire format, follows field tag [1520] in the proposed format.

Elements, the information that follows a field tag, must be presented in a specific order within a field. The information may be either freeform and of variable length, such as address, or may require a specific format, such as the dollar amount. Each element within a field is allocated a specific amount of space; some elements are fixed in length, such as sender routing number, while others are variable in length, such as address. A delimiter element (*) will always follow a variable length element to denote the end of the element. No delimiter will follow a fixed length element. The elements convey information in a specific order and a combination of identifier code and field position is used to identify such information as account number. For example, the current format allows the identifier code, in this case /AC- account number, to be used somewhere in the field following the beneficiary field tag, BNF=. . ./AC–123. Under the proposed format, the beneficiary field tag [4200] may be followed by up to five elements: a defined one character identifier code (first element); the identifier specified by the code, in this case an account number (second element); a delimiter, which is always an asterisk (third element); the beneficiary name (fourth element); and another delimiter (fifth element), such as [4200]D123*SMITH*. The identifier code is always the first element and identifies the type of number that follows it, in this case "D" represents account number. The other identifier codes are outlined in the Glossary.

The proposed format would also provide ample space to include identifying information in a payment order to facilitate financial institution compliance with Treasury's proposed travel rule. For example, the field following the originator tag [5000] has sufficient space, up to a maximum of 186 characters (including the tag) for the originator's financial institution to include the originator's account number, name, and address. The proposed format also provides more

[3] The terminology used here generally conforms to the definitions in article 4A of the Uniform Commercial Code; however, the field names in the proposed format use the term "financial institution" instead of bank in all cases.

space to identify the bank that accepted the payment order from the originator; the bank routing number, name and address can be described in the field following originator's financial institution tag [5100], up to a maximum of 186 characters (including the tag). The current format only provides a maximum of 61 characters to identify both the originator and the originating bank.

If the customer of the originating bank is a nonbank financial institution, the originator tag [5000] and originator's financial institution tag [5100] can be used to identify the transmittor and transmittor's financial institution, respectively.[4] In this case, the field following the originator tag [5000] can be used to reflect the transmittor's account number, name and address. Information identifying the "transmittor's financial institution," the nonbank financial institution that accepts the payment order from the transmittor, can be included in the field following the originator's financial institution tag [5100]. If the bank accepting the transmittal order from the transmittor's financial institution (the originating bank) is also the institution sending the payment order to Fedwire, then it can be identified by routing number and short name in the field following the Sender DFI tag [3100].

For example, John Doe is sending $7,000 to his aunt, Sally Jones, who has an account at Bank Seven. His aunt requests that he include instructions for her bank to call her when the money is received. John decides to send the money from his money market mutual fund at Big Broker/Dealer. John asks his account officer at Big Broker/Dealer to send the money to his aunt at Bank Seven. The account officer has John's name, address, and account number on file, and asks John to provide the same information for his aunt. John provides his aunt's name and address, but is unaware of her account number.

Big Broker/Dealer prepares a transmittal order and forwards to its bank, Bank Away for transmission over Fedwire:

Amount: $7,000
Date: July 12, 1993
From: Our Account 767676, on behalf of our customer John Doe, account MMMF123456, One Wayward Avenue, Watertown, Md;
To: Bank Seven, Chicago, ABA 079999999, for further credit to Sally Jones, 1920 Flapper Lane, Chicago, Il;
Instructions: Phone advice—Ms. Jones (312) 555–1212.

Bank Away accepts Big Broker/Dealer's transmittal order and prepares a corresponding transmittal order to send over Fedwire (in bold):

Description	Tag	Elements
Type/Sub-type	[1510]	1000.
IMAD	[1520]	0712E9999999000001.
Amount	[2000]	$7,000.00.
Sender DFI	[3100]	059999999Away*.
Sender Reference	[3320]	9999999999999999.
Receiver DFI	[3400]	079999999Bankseven*.
Business Function Code	[3500]	CTR.
Beneficiary's FI	[4100]	F079999999*Bank Seven NA*.
Beneficiary	[4200]	Dunknown*Sally Jones* 1920 Flapper LA* Chicago, IL*.
Originator	[5000]	NMMMF123456*John Doe* 1 Wayward Ave* Watertown, MD*.
Originator's FI	[5100]	D767676*Bigbroker/Dealer* 222 Camden Yards Circle* Baltimore, MD*.
FI to FI Beneficiary's FI Advice	[6310]	PHN on Receipt* Call Ms Jones 312–555–1212*.

If the transmitter's financial institution forwards the transmittal order to a financial institution that is not a Fedwire participant but utilizes a correspondent to access Fedwire, that institution's identifying information, such as routing number and name, may follow the instructing financial institution tag [5200]. In the example above, if Bank Away is not a Fedwire participant but is a respondent of Ultimate Bank & Trust, which is a Fedwire participant, then the payment order sent to Fedwire would change as follows:

Description	Tag	Elements
Sender DFI	[3100]	058888888Ultimate*.
Instructing FI	[5200]	F059999999*Bank Away*.

If the customer of the originating bank is an individual, corporation, or bank, the originator tag [5000] and originator's financial institution tag [5100] can be used to identify the originator and originator's financial institution, respectively.[5] In the example above, if John Doe decides to send the money from his account (12331234) at Bank Away, then the payment order sent to Fedwire would change as follows:

Description	Tag	Elements
Sender DFI	[3100]	059999999Away*.
Originator	[5000]	D12331234*John Doe*. 1 Wayward Ave* Watertown, MD*.
Originator's FI	[5100]	F059999999*Bank Away*.

[4] The terms "transmittal order," "transmitter" and "transmitter's financial institution" are defined in the notice of proposed rule-making (58 FR 46014, Aug. 31, 1993).

[5] The terms "originator," "originator's financial institution," and "payment order" are defined in the notice of proposed rulemaking (58 FR 46014, Aug. 31, 1993).

If the beneficiary's financial institution is not a Fedwire participant, the sender may direct the payment order to a correspondent that maintains a relationship with the beneficiary's financial institution. In such a case, the identifying information, such as routing number and name of the beneficiary's financial institution, may follow the beneficiary's FI tag [4100]. The correspondent would be identified in the field following the receiver DFI tag [3400]. In the example above, if Sally Jones is not a customer of Bank Seven, but her credit union, Local CU, is its respondent, then the payment order sent to Fedwire would change as follows:

Description	Tag	Elements
Receiver DFI	[3400]	079999999Bankseven*.
Beneficiary's FI	[4100]	F271011111Local CU* 808 Watertower Center* Chicago, IL 60604*.
Beneficiary	[4200]	Dunknown*Sally Jones* 1920 Flapper LA* Chicago, IL*.

The beneficiary tag [4200] and beneficiary's financial institution tag [4100] can also be used to identify the recipient and recipient's financial institution when the person to be paid by the transmittal order is the customer of a non-bank financial institution.[6] In this case, the field following the beneficiary tag [4200] can be used to reflect the recipient's account number, name and address. Information identifying the "recipient's financial institution," the nonbank financial institution that accepts the payment order for the recipient, can be included in the field following the beneficiary's financial institution tag [4100]. If the bank accepting the payment order for delivery to the recipient's financial institution is also the institution that is receiving the payment order from Fedwire, then it can be identified by routing number and short name in the field following the Receiver DFI tag [3400].

In the example above, if John Doe had sent the money to his aunt in care of a currency exchanger, Money Swap, who is also a customer of Bank Seven, then the payment order sent to Fedwire would reflect the following:

Description	Tag	Elements
Receiver DFI	[3400]	079999999Bankseven*.
Beneficiary's FI	[4100]	D666666*Money Swap Inc* 10363 International Blvd* Chicago, IL 60604*.
Beneficiary	[4200]	Dunknown*Sally Jones* 1920 Flapper La* Chicago, IL*.

The proposed format also accommodates inclusion of complete information received in an international (SWIFT or CHIPS) transmittal of funds that must be forwarded over Fedwire.

For example, on July 12, 1993, First Bronx NY receives a SWIFT message from Black Forest Bank, Munich (SWIFT identifier BBFBKDEZZ) to pay Cowboy Trust, Dallas for further credit to T. Edwards, account 123456 at the Rodeo Road Branch in Austin. The SWIFT message indicates that Franz Mousse, doing business as Steak Palace, Maximillianstrasse 38, Munich, is paying T. Edwards $34,000 US, $10,000 on invoice TT33 for two cases of Texas T's Bar-B-Q sauce and $24,000 as a franchise fee for use of the Texas T's Secret Recipe. Black Forest Bank includes an instruction that states "Pay immediately. Do not deduct any related fees from the transfer amount—charge fee separately." First Bronx prepares a corresponding transmittal order and forwards it over Fedwire (in bold):

Description	Tag	Elements
Type/Sub-type	[1510]	1000.
IMAD	[1520]	0712B9999999000001.
Amount	[2000]	$34,000.00.
Sender DFI	[3100]	029999999First Bronx NY*.
Sender reference	[3320]	9999999999999999.
Receiver DFI	[3400]	Cowboybank*.
Business function code	[3500]	CTR.
Intermediary FI	[4000]	F029999999First Bronx NY*.
Beneficiary's FI	[4100]	F119999999*Cowboybank* Rodeo Road Branch* Austin*.
Beneficiary	[4200]	D123456*T. Edward*.
Originator	[5000]	Dunknown*Franz Mousse* DBA Steak Palace* Maximillianstrasse 38* Munich, Germany*.
Originator's FI	[5100]	BBFBKDEZZ* Blackforest BK* Munich, Germany*.
Originator to beneficiary information.	[6000]	Pay T. Edwards $34,000 US,* $10,000 INV# TT33 2 Cases Texas T'S* Bar-B-Q Sauce, $24,000 Franchise Fee* for Texas T's Secret Recipe*.
FI to FI receive FI information.	[6100]	Per Black Forest Bank* Pay Immediately. Do not deduct any* related fees from the transfer* amount—Charge Fee Separately*.

If a transmittal order is received by a domestic financial institution via CHIPS, when a corresponding payment order is prepared on Fedwire, the sending bank's CHIPS identifier may be included in the appropriate field. If the

[6] The terms "recipient" and "recipient's financial institution" are defined in the notice of proposed rule-making (58 FR 46014, Aug. 31, 1993) and include, respectively, the terms "beneficiary" and "beneficiary's bank." For the purposes of Fedwire, the terms "recipient" and "recipient's financial institution" will refer to transactions in which a nonbank financial institution makes payment to the person named in the transmittal/payment order.

CHIPS participant is the originator's financial institution, tag [5100], then the CHIPS identifier may be substituted for the SWIFT identifier in that field. If the CHIPS participant is not the originator's bank, then the originator's bank's SWIFT identifier remains in the originator's FI tag [5100] and the CHIPS participant's identifier is shown in the instructing financial institution tag [5200]. In the example above, if Black Forest Bank has a New York branch that is a CHIPS participant:

Description	Tag	Elements
Originator's FI ..	[5100]	BBFBKDEZZ* Blackforest BK*.
Instructing FI	[5200]	CBLKFOR99* Blackforest NY*.

Competitive Impact—The Board believes that this proposal will have no adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Specifically, the Board believes that implementing the proposed format will have only a minimal effect on the operations of the CHIPS payment system. That is, CHIPS settlement participants will need to utilize the new format when sending and receiving settlement transfers through the Federal Reserve Bank of New York; however, these same depository institutions are also Fedwire participants and will utilize the new format to send and receive all Fedwire traffic.

The Board also believes that the adoption of the proposed format will increase compatibility among CHIPS, SWIFT and Fedwire. Increased compatibility facilitates the mapping of transfer information from one format to another when a payment order flows through multiple intermediary banks that use different services. Enhanced compatibility also broadens the range of choices that sending and intermediary financial institutions have when selecting a transfer system.

Request for Comment

The Board requests comment on its proposal to adopt an expanded Fedwire format and adopt a more comprehensive set of data elements by late 1996 and on the benefits and costs to the industry of converting to the expanded format. Specifically, the Board requests comments on the following:

I. General

A. Do you believe the proposed format will be flexible enough to meet your existing and future business needs? Law enforcement's needs? Will it facilitate compliance to Treasury's proposed travel rule?

II. Specific Effects on Depository Institutions

A. Type of Connection—Please describe how your institution accesses Fedwire and the modifications you anticipate making to that facility to support an expanded format:

1. Do you access Fedwire through a computer interface, Fedline℠, or the off-line service?

2. If you have a computer interface, is it a vendor supplied or in-house developed system? How long does the development team or vendor estimate that it will take to develop, test and implement the necessary software modifications to accommodate the proposed format at your site? Are there additional charges assessed for changes required by the Federal Reserve System?

3. Does your institution also use CHIPS? If yes, do you use a different funds transfer system to access CHIPS or does the system you use to access Fedwire also support CHIPS? If yes, will conversion to the new format be simplified because you already have software that processes CHIPS transfers? If the system is vendor supplied, does the vendor currently support CHIPS and SWIFT interfaces?

4. Will back room systems that upload files or download files to your funds transfer system (or Fedline℠) have to be modified as a result of the format change? To what degree: significantly, moderately, or not at all?

What types of back office systems: general ledger, deposit accounting, customer information, customer delivery, or something else?

5. Will it cost you significantly more to process a larger format? If yes, in what ways?

B. Operations

1. What types of procedural changes do you anticipate to accommodate the new format?

2. What internal training and customer education efforts do you believe to be required?

3. What other operational effects and costs do you anticipate?

C. Customer Effects

1. Do you expect your customers to incur additional costs to accommodate the new format? If yes, what type of costs?

2. Do you expect the new format to have a minor or significant impact on your customers? Why?

III. Implementation Strategies

A. Schedule

1. Is the proposal to implement the new format by late 1996 reasonable? If not, when do you believe your institution and the industry in general could be ready for a new format?

2. Do you believe the schedule can accommodate your institution's testing requirements? What are your institutions testing requirements?

B. Implementation Alternatives

1. Will any one alternative be more problematic than another for your institution? Is any alternative likely to be more beneficial than another? Please describe the advantages and disadvantages you anticipate under each alternative:

a. One-day cutover: all participants begin sending and receiving the new format on the same date.

b. Two-stage cutover: participants will begin receiving the new format during phase one and sending the new format during phase two. Each phase will last six months.

c. Staggered-date full function cutover: each participant selects a date to begin sending and receiving the new format.

By order of the Board of Governors of the Federal Reserve System, November 24, 1993.

William W. Wiles,

Secretary of the Board.

Glossary

Acceptance Timestamp Tag [1110]—Field indicates the date and time that Fedwire accepted the transfer. Also includes the Fedwire application ID.

Adjustment Tag [3000]—Field used to carry the as-of date and reason for an adjustment; supplied by the FRB granting the adjustment.

Advice Code—An element of the FI to FI advice tags (see FI to FI); a three character code that identifies the method to be used to notify a party of receipt of funds:
LTR Letter
PHN Phone
TLX Telex
WRE Wire

Amplifying Advice—An element of the FI to FI advice tags (see FI to FI); descriptive information used to deliver the payment notification, e.g. phone number and contact name.

Alpha—EBCDIC data representation standard; includes any alphabetic character A–Z, space character, numeric digit 0–9, and the following: .< > ( ) + ! & § ; / |, % – ? ' : # @ = " { } \

Amount Tag [2000]—Field used to indicate the amount to be transferred; eighteen characters, with commas, period, and dollar (dollar sign is optional).

BBI=Field tag used to identify Bank to Bank Information in the current format; contains miscellaneous information pertaining to the transfer.

BBK=Field tag used to identify Beneficiary's Bank in the current format: identifies the bank acting as financial agent for the beneficiary of the transfer.

Beneficiary [7]—The person to be paid by the beneficiary's bank. Also see Recipient.

Beneficiary's Bank [1]—The bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account. Also see Recipient's Financial Institution.

Beneficiary Tag [4200]—Field used to identify the person to be paid by the beneficiary's bank or recipient's financial institution (non-bank).

Beneficiary's Financial Institution Tag [4100]—Field used to identify the beneficiary's bank or recipient's financial institution (non-bank) in which an account of the beneficiary/recipient is to be credited pursuant to the order or which otherwise is to make payment.

BNF=Field tag used to identify the Beneficiary in the current format; the person to be paid by the beneficiary's bank.

Business Function Tag [3600]—Field used to carry the three character code, formerly known as "Product Code," that enables the receiver of the message to determine the purpose of the transfer:

BTR Bank Transfer—Beneficiary is a bank.
CTR Customer Transfer—(Beneficiary is a nonbank)
CKS Check Same-Day Settlement
DEP Deposit to Sender's Account
DRW Drawdown
FFR Fed Funds Returned
FFS Fed Funds Sold

Chips—Clearing House Interbank Payments System

CIPS—Federal Reserve Computer Interface Protocol Specifications

DLM—Delimiter—a code used to mark the end of variable length data; an asterisk "*" is used as a delimiter element in the proposed format.

Element—A specific piece of information carried in a field. Elements further identify or define the contents of a field, for example, the beneficiary field generally includes elements such as name and address.

Error Field Tag [1130]—Field is completed when the Federal Reserve returns a Fedwire message to the sender and includes an error code, number, and description, e.g. "E185 Invalid Type/Subtype."

FI to FI Tags [6100] to [6500]—Financial Institution to Financial Institution Information—General transfer-related and advice information that is forwarded from one financial institution to another. In the proposed format, the FI to FI tags include information that commonly follows the BBI= tag and the advice method components of the IBK=, BBK= and BNF= tags in the current format. The FI to FI tags are:

Receiving FI Information—[6100]
Intermediary FI Information—[6200]
Intermediary FI Advice Info.—[6210]
Beneficiary's FI Information—[6300]
Beneficiary's FI Advice Info.—[6310]
Beneficiary Method of Payment—[6320]
Beneficiary Information—[6400]
Beneficiary Advice Information—[6410]
FI to FI information (generic)—[6500]

Field—A sub-portion of a message extending from a tag up to, but not including, another tag or the end of the message. A field begins with a tag followed by one or more individual data items, called elements. The definition of the tag will determine the format of the field and the elements within the field. For example, tag [4200] is defined as "beneficiary" and contains several elements that may be used to describe the beneficiary, that is, account number, name and address, while tag [2000], which is defined as amount, contains only one 18-character element to identify the dollar amount. See Element.

Funds Transfer [1]—The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. Automated clearinghouse transfers or funds transfers governed in any part by the Electronic Funds Transfer Act of 1978 (Title XX, Public Law 95–630, 92 Stat. 3728, 15 U.S.C. 1693 *et seq.*, as amended from time to time), are excluded from this definition.

IBK=Field tag used to identify an Intermediary Bank in the current format; the institution(s) between the receiving institution and the beneficiary's institution through which the transfer must pass, if specified by the sending institution. In such cases, this is the receiving institution's credit party.

Identifier Code—The first element following a transfer party tag; a one character code that further defines the type of identifier that follows it (See Identifier). Valid codes are:

N=Non-Bank
D=Account Number (DDA)
B=Bank Identifier Code (BIC/SWIFT)
C=CHIPS Participant
F=Routing Number

Identifier—A variable-length element that carries a number or a combination of letters and numbers to more fully identify a particular party in a payment message, for example, an account number or routing number. An identifier follows each party tag:

Intermediary FI—[4000]
Beneficiary's FI—[4100]
Beneficiary—[4200]
Originator—[5000]
Originator's FI—[5100]
Instructing FI—[5200]

Incoming Funds Transfer—A payment order sent from the Fedwire application to the participating depository institution, the receiver, which notifies the receiver that funds have been credited to its account. An incoming funds transfer is received when a corresponding Outgoing Funds Transfer has been initiated by another institution. See Outgoing Funds Transfer.

IMAD Tag [1520]—Field used to carry the Input Message Accountability Data. IMAD is established at the time the message is first received by a Federal Reserve Bank; includes a date, the logical terminal (Lterm) associated with the interfacing application that sent the message to Fedwire, and the sequence number assigned by the interfacing application.

INS=Field tag used to identify the Instructing Bank in the current format; the institution other than the originator's bank that instructs the sender to execute the transaction.

Intermediary Bank [1]—A receiving bank other than the originator's bank or the beneficiary's bank.

Intermediary Financial Institution [1]—A receiving financial institution, other than a bank, the transmittor's financial institution or the recipient's financial institution.

Intermediary Financial Institution Tag [4000]—Field used to identify an intermediary bank (see IBK=) or a non-bank financial institution, other than the beneficiary's bank / recipient's financial institution, that receives a payment order from Fedwire or from a Fedwire participant.

Instructing Financial Institution Tag [5200]—Field used to identify an instructing bank or non-bank financial institution. See INS=.

Intercept—Fedwire's response to the sender of an outgoing funds transfer that is rejected or otherwise intercepted. The intercept message is a copy of the outgoing funds transfer message with a description of the error added. See Error Field Tag [1130].

Interface Code (No Tag)—Field indicates the type of communications protocol used by the application sending an outgoing funds transfer to Fedwire:

X FLASH
Z FRISC

Message Disposition Tag [1100]—A field used to carry certain message-related control information; the field has four elements: format version, test/production code, message duplication code (out), and message status indicator. Each element is described below.

[7] Regulatory definition 58 FR 46014, August 31, 1993. All similar definitions throughout this document will be identified with this footnote number.

Format Version: a two character code used to identify the format of the message. Generally, only one value will be valid for this code, but a second value may be defined during a period of transition from one format to another.

Test/Production Code: a one character code used to indicate whether the sending application was in the test or production mode when the transfer was originated:

T Test Mode

P Production Mode

Message Duplication Code: a one character code used to indicate whether the message has been sent before:

" " Original Message

P Possible Duplicate

R Retrieval on an Original Message

C Copy of an Original

Message Status Indicator: One character code that indicates the processing status of the message:

0 Intercepted Outgoing Transfer

2 Accepted (processed) Outgoing Transfer resulting in a debit/credit

3 Rejected (error) Outgoing Transfer

7 Accepted (processed) Outgoing Transfer (no accounting entry)

N Incoming Funds Transfer

"P"=Possible Duplicate

"R"=Retrieval of an Original Message

"C"=Copy of an Original Message

NUM—EBCDIC data representation standard; includes any numeric digit 0–9.

OBI=Field tag used to identify Originator to Beneficiary Information in the current format; information conveyed from the originator to the beneficiary.

OGB=Field tag used to identify Originator's Bank in the current format; the bank acting for the originator of the transfer.

OMAD Tag [1120]—Field used to carry the Output Message Accountability Data. OMAD is established at the time the message is queued for delivery by a Federal Reserve Bank; includes the date, the logical terminal (Lterm) associated with the interfacing application that will receive the message from Fedwire, a sequence number, a time stamp, and a code identifying the FRB delivering the message.

ORG=Field tag used to identify the Originator in the current format; initiator of the transfer.

Originator [1]—The sender of the first payment order in a funds transfer. Also see Transmittor.

Originator's Bank [1]—The receiving bank to which the payment order of the originator is issued if the originator is not a bank, or the originator if the originator is a bank. Also see Transmittor's Financial Institution.

Originator Tag [5000]—Field used to identify the sender of the first payment order in a funds transfer.

Originator's Financial Institution Tag [5100]—Field used to identify the bank or non-bank financial institution to which the payment order of the originator is issued.

Outgoing Funds Transfer—A payment order sent from a participating financial institution, the sender, to the Fedwire application. If accepted by Fedwire, the sender's account is debited and the receiving FI's account is credited, and a corresponding outgoing funds transfer is delivered to the receiving FI. See Incoming Funds Transfer.

Outgoing Transfer Response—See Intercept.

Payment Order [1]—An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause to another bank to pay, a fixed or determinable amount of money to a beneficiary if: (1) the instruction does not state a condition of payment to the beneficiary other than time of payment; (2) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and (3) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank. Also see Transmittal Order.

Previous Message IMAD Tag [3500]—Field used to reference the IMAD of an earlier funds transfer when the sender is returning, correcting or otherwise referencing a transfer previously sent or received.

Receiving Bank [1]—The bank to which the sender's instruction is addressed.

Receiver DFI Number Tag [3400]—Field used to carry the nine-digit routing number and short name of the receiver.

Receiving Financial Institution [1]—The financial institution to which a sender's instruction is addressed. The term "receiving financial institution" includes a receiving bank.

Recipient [1]—The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary.

Recipient's Financial Institution [1]—The financial institution identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank.

Reference for the Beneficiary Tag [3321]—Field used to provide reference information that enables the beneficiary to identify the transfer; the beneficiary reference element may contain up to 16 characters (letters and/or numbers).

RFB=Field tag used to identify the Reference for the Beneficiary in the current format, see Reference for Beneficiary Tag [3321].

Sender [1]—The person giving the instruction to the receiving bank or receiving financial institution.

Sender FI Number Tag [3100]—Field used to carry the nine-digit routing number and short name of the sender.

Sender Reference Tag [3320]—Field used to carry the sender's reference number; may contain up to 16 characters (letters and/or numbers).

Sender Supplied Information Tag [1500]—Field is used only for outgoing and intercepted funds transfers and contains three elements: user request correlation data, test/production code, and message duplication code (in). The elements are described below:

User Request Correlation Data: May be used to identify an inquiry request and the requesting terminal in a multi-terminal environment. Fedwire returns the contents of the original outgoing message when sending an intercept message.

Test/Production Code: See description under Message Disposition Tag [1100].

Message Duplication Code (In): See description under Message Disposition Tag [1100]; modified as follows. Values are:

" " Original Message

P Possible Duplicate

Special Handling Instructions Tag [1140]—Field is used by Fedwire to insert special handling instructions.

Tag—Used to denote the beginning of a field. In the proposed format, a tag is composed of six characters in the form [nnnn], where "n" is a number, the left bracket "[" is the first character, and the right bracket "]" denotes the end of the tag. There are thirty-three tags defined. Also known as a "field tag".

In the current format, a "field tag" denotes the beginning of third-party information, and is composed of four characters in the form aaa=, where "a" is a letter and equals sign denotes the end of the tag. There are nine tags: ORG=, OGB=, IBK=, BBK=, BNF=, RFB=, OBI=, BBI=, and INS=.

Transmittal Order [1]—An instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or to cause to pay, a fixed or determinable amount of money to the recipient if: (1) the instruction does not state a condition to payment to the recipient other than time of payment; (2) receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and (3) the instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution. The term transmittal order includes a payment order.

Transmittor [1]—The sender of the first transmittal order in a transmittal of funds. The term transmittor includes the originator.

Transmittor's Financial Institution [1]—The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution, or the transmittor if the transmittor is a financial institution. The term transmittor's financial institution includes the originator's bank.

Type/Subtype Code Tag [1510]—Field indicates the transfer type and sub-type.

Type Code Values:

10 Third-party Funds Transfer

15 Foreign Transfers—Foreign Central Banks and International agencies

16 Settlement Transfers

Sub-type Code Values:

00 Transfer

01 Request for Reversal

02 Reversal of Transfer

07 Request for Reversal of Prior Day Transfer

08 Reversal of Prior Day Transfer

20 "As-of" Adjustment
31 Request for Credit (Drawdown) Transfer
32 Funds Transfer Honoring a Request for Credit (Drawdown) Transfer
33 Refusal to Honor a Request for Credit (Drawdown) Transfer
90 Service Message

APPENDIX A.—FORMAT PROPOSAL LIST OF TAGS BY MESSAGE TYPE

A	B	C	D	E	F
Tag No.	Tag Description[a]	Max. field size (with tag)[b]	Outgoing funds transfer (DFI to Fedwire)	Intercept response to outgoing transfer (Fedwire to DFI)	Incoming funds transfer (Fedwire to DFI)
	Order in which field appears in message.[c]				
None[d]	Interface code	1	01		
[1100][d]	Message disposition	9		01	01
[1110][d]	Acceptance timestamp	18		02	02
[1120][d]	OMAD	36			03
[1130][d]	Error field	46		03	
[1140][d]	Special handling instructions	33		04	04
[1500][d]	Sender supplied information	[e] 18	02	05	
[1510][d]	Type/subtype code	10	03	06	05
[1520][d]	IMAD	24	04	07	06
[2000]	Amount	24	05	08	07
[3000]	Adjustment	14	06	09	08
[3100]	Sender DFI	34	07	10	09
[3320]	Sender reference	23	08	11	10
[3321]	Reference for beneficiary	23	09	12	11
[3400]	Receiver DFI	34	10	13	12
[3500]	Previous message IMAD	24	11	14	13
[3600]	Business function	9	12	15	14
[3700]	Charges[f]	9	13	16	15
[4000]	Intermediary FI	186	14	17	16
[4100]	Beneficiary's FI	186	15	18	17
[4200]	Beneficiary	191	16	19	18
[5000]	Originator	186	17	20	19
[5100]	Originator's FI	186	18	21	20
[5200]	Instructing FI	186	19	22	21
[6000]	Originator to beneficiary information	150	20	23	22
[6100]	FI to FI receive FI information	222	21	24	23
[6200]	FI to FI intermediary FI information		22	25	24
[6210]	FI to FI advice information		23	26	25
[6300]	FI to FI beneficiary's FI information		24	27	26
[6310]	FI to FI beneficiary's FI advice information		25	28	27
[6320]	FI to FI beneficiary method of payment		26	29	28
[6400]	FI to FI beneficiary information		27	30	29
[6410]	FI to FI beneficiary advice information		28	31	30
[6500]	FI to FI information		29	32	31

[a] A description of the current format is in the Computer Interface Protocol Specifications (CIPS) pages 5.8.1, 5.8.2 and 5.8.9.
[b] Character count includes six character tag consisting of 4 digits and 2 brackets.
[c] Optional tags may be omitted from message. A blank indicates the tag is not used in this message type. Maximum message size has also increased: Outgoing has 604 characters in the current format, 1731 in the proposed format Intercept 731 current, 1834 proposed; and Incoming 723 current, 1808 proposed.
[d] The interface code and fields with tags in the 1000 series are designed to carry technical information. The content and purpose of these tags and fields will be more fully defined when the CIPS are published.
[e] Field will contain 16 characters in an intercept message because format code is omitted.
[f] Field is reserved for possible future use.
[l] (Total for all tags in [6100] to [6500] series).

[FR Doc. 93–29384 Filed 11–30–93; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino-Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN NOVEMBER 8, 1993 AND NOVEMBER 11, 1993

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
VF Corporation, H.H. Cutler Company, H.H. Cutler Company	94-0095	Nov. 8, 1993.
John J. Harnish, Skinner Corporation, Northern Commercial Company and Newco, Inc	94-0109	Nov. 8, 1993.
Citicorp, Schlumberger Ltd., Dowell Schlumberger Inc. (Dowell Indust. Services Div.)	94-0129	Nov. 8, 1993.
ITT Corporation, Skandia Insurance Company Limited, American Skandia Life Reinsurance Corporation	94-0138	Nov. 8, 1993.
Pennzoil Company, Mobil Corporation, Mobil Oil Exploration & Producing Southeast Inc	94-0143	Nov. 8, 1993.
Mobil Corporation, Pennzoil Company, Pennzoil Exploration and Production Company	94-0144	Nov. 8, 1993.
Isaac Perlmutter, Bristol-Myers Squibb Company, Clairol Incorporated	94-0149	Nov. 8, 1993.
Marshall S. Cogan, Perfect Fit Voting Trust, Perfect Fit Industries, Inc	94-0151	Nov. 8, 1993.
Ronald O. Perelman, Guthy-Renker Corporation, Guthy-Renker Corporation	94-0152	Nov. 8, 1993.
Victor K. Kiam II, Bristol-Myers Squibb Company, Clairol Incorporated	94-0153	Nov. 8, 1993.
Forest Oil Corporation, Atlantic Richfield Company, Atlantic Richfield Company	94-0154	Nov. 8, 1993.
Mr. Keith Rupert Murdoch, Combined Broadcasting, Inc., Combined Broadcasting of Philadelphia, Inc	94-0159	Nov. 8, 1993.
Vintage Petroleum, Inc., Santa Fe Energy Resources, Inc., Santa Fe Energy Operating Partners, L.P	94-0164	Nov. 8, 1993.
Mr. Michael Futerman, Carmel Trust (a Cayman Islands person), Auto Works Holdings, Inc	94-0188	Nov. 8, 1993.
KP Oil, Inc., The British Petroleum Company p.l.c., BP Exploration & Oil Inc. & Service Station Holdings Inc	94-0194	Nov. 8, 1993.
Cyprus Minerals Company, Amax Inc., Amax Inc	93-1274	Nov. 9, 1993.
Vintage Petroleum, Inc., The Prudential Insurance Company of America, Vintage/P Acquisition Limited Partnership.	94-0171	Nov. 10, 1993.
Coltec Industries Inc., The Morgan Stanley Leveraged Equity Fund II, L.P., Coltec Holdings Inc	94-0174	Nov. 10, 1993.
David I Margolis, Coltec Industries Inc., Coltec Industries Inc	94-0175	Nov. 10, 1993.
NationsBank Corporation, United Companies Financial Corporation, Foster Mortgage Corporation	94-0176	Nov. 10, 1993.
Morgan Stanley Group Inc., Coltec Industries Inc., Coltec Industries Inc	94-0178	Nov. 10, 1993.
The B.F. Goodrich Company, Henry Barbanel, Sanncor Industries, Inc	94-0179	Nov. 10, 1993.
Merisel, Inc., Computerland Corporation, Computerland Corporation	94-0170	Nov. 12, 1993.
Metropolitan Life Insurance Company, Joseph L. Cashen, Century 21 Real Estate #1, Inc	93-1810	Nov. 15, 1993.
Metropolitan Life Insurance Company, John P. Gerken, Century 21 Real Estate #1, Inc	93-1811	Nov. 15, 1993.
BEI Holdings, Ltd., Amresco Holdings, Inc., Amresco Holdings, Inc	94-0066	Nov. 15, 1993.
CGW Southeast Partners I, L.P., BEI Holdings, Ltd., BEI Holdings, Ltd	94-0067	Nov. 15, 1993.
QVC Network, Inc., Paramount Communications Inc., Paramount Communications Inc	94-0131	Nov. 15, 1993.
Color Tile Holdings, Inc., ABF Acquisition Corp., ABF Acquisition Corp	94-0183	Nov. 15, 1993.
Willcox & Gibbs, Inc., BTR plc, Summers Group, Inc	94-0185	Nov. 15, 1993.
La Quinta Inns, Inc., La Quinta Motor Inns Limited Partnership, La Quinta Motor Inns Limited Partnership	94-0190	Nov. 15, 1993.
Healthsource, Inc., Healthsource Maine, Inc., Healthsource Maine, Inc	94-0191	Nov. 15, 1993.
Castle Harlan Partners II, L.P., INDSPEC Chemical Corporation, INDSPEC Chemical Corporation	94-0192	Nov. 15, 1993.
Warburg, Pincus Investors, L.P., Celtrix Pharmaceuticals, Inc., Celtrix Pharmaceuticals, Inc	94-0193	Nov. 15, 1993.
Forest Oil Corporation, Jeff D. Sandefer, General Sandefer Offshore Partnership and General	94-0201	Nov. 15, 1993.
Ronald J. Jackson, Mattel, Inc., Mattel, Inc	94-0202	Nov. 15, 1993.
La Confederation des caisses populaires et d'economie, The Laurentian Mutual Management Corporation, The Laurentian Group Corporation.	94-0203	Nov. 15, 1993.
Jason Incorporated, Code, Hennessy & Simmons Limited Partnership, Koller Industries, Inc	94-0210	Nov. 15, 1993.
Charles F. Dolan, Charles F. Dolan, Cablevision of Connecticut Limited Partnership	94-0220	Nov. 15, 1993.
AEW Partners, L.P., Chase Manhattan Bank, N.A., Chase Manhattan Bank, N.A	94-0222	Nov. 15, 1993.
Colgare-Palmolive Company, H.F. Johnson Distributing Trust, Overseas IP, Inc	94-0223	Nov. 15, 1993.
J. Baker, Inc., Dennis B. Tishkoff, Tishkoff Enterprises, Inc	94-0234	Nov. 15, 1993.
Dowthorpe plc, Lear Siegler Holdings Corp., Lear Siegler Measurement Controls Corp	94-0126	Nov. 16, 1993.
Fleming Companies, Inc., William J. Woolley, Big W of Florida, Inc	94-0135	Nov. 16, 1993.
Anheuser-Busch Companies, Inc., Societe Nationale D'Investissement, Illochroma International Inc	94-0161	Nov. 17, 1993.
Torchmark Corporation, General Electric Company, TEAI—Chalkley Limited Partnership	94-0216	Nov. 17, 1993.
Quorum Health Group, Inc., Baptist Health Services, Inc., Baptist Hospital of Gadsden, Inc	94-0155	Nov. 18, 1993.
Wellcome plc, Eastman Kodak Company, Sterling Winthrop Inc	94-0158	Nov. 18, 1993.
Knape & Vogt Manufacturing Company, Code, Hennessy & Simmons Limited Partnership, The Hirsh Company.	94-0163	Nov. 18, 1993.
Ford Motor Company, Fuji Heavy Industries Ltd., Subaru Leasing Corp	94-0204	Nov. 18, 1993.
Mr. James DeSorrento, Kansallis-Osake-Pankki, C4 Media Cable South, Limited Partnership	94-0217	Nov. 18, 1993.
Mr. James DeSorrento, First Union Corporation, C4 Media Cable South, Limited Partnership	94-0218	Nov. 18, 1993.
The Williams Companies, Inc., Sun Company, Inc., Sun Marine Terminals Company	94-1026	Nov. 19, 1993.
Integrated Health Services, Inc., Carena Holdings, Inc. (a Canadian company), Central Park Lodges, Inc	94-0219	Nov. 19, 1993.
Aetna Life and Casualty Company, Executive Risk, Inc., Executive Risk, Inc	94-0243	Nov. 19, 1993.
Tribune Company, Gannett Co., Inc., Gannett Co., Inc	94-0247	Nov. 19, 1993.
MEPC plc, American Property Trust, Newco	94-0248	Nov. 19, 1993.
Apertus Technologies Incorporated, NYNEX Corporation, Systems Strategies Inc	94-0252	Nov. 19, 1993.
CGW Southeast Partners, L.P., Rehrig International, Inc., Rehrig International, Inc	94-0253	Nov. 19, 1993.
The Interpublic Group of Companies, Inc., WPP Group plc, Scali, McCabe, Sloves, Inc	94-0256	Nov. 19, 1993.
PepsiCo, Inc., Charles R. Bronfman, Prime Restaurant Systems of America Inc	94-0258	Nov. 19, 1993.
Odyssey Partners, L.P., The Trkja Family Trust, Scotsman Group, Inc	94-0263	Nov. 19, 1993.
Eby-Brown Company L.P., USX Corporation, Bosart Co	94-0272	Nov. 19, 1993.

FOR FURTHER INFORMATION CONTACT: Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room
Sandra M. Peay or Renee A. Horton,

303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–29405 Filed 11–30–93; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of December meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the monthly meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday and Thursday, December 8 and 9, 1993 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting includes discussions relating to (1) Actuarial Methods for Measuring Pensions and Post Employment Benefits, (2) Capital Expenditures, and (3) Accounting Concepts Statement: Entity and Display, elements, recognition and measurement, and cost accounting.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 750 First St., NE., room 1001, Washington, DC 20002, or call (202) 512–7354.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, section 10(a)(2), 86 Stat. 770, 774 (1974) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: November 24, 1993.

Ronald S. Young,

Executive Director.

[FR Doc. 93–29352 Filed 11–30–93; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–76]

Availability of Administrative Reports and Software Package of Health Effects Studies

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of Administrative Reports of eight ATSDR health effects studies and a software package for analysis of disease clusters.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Lybarger, M.D., M.S., Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–31, Atlanta, Georgia 30333, telephone (404) 639–6200.

SUPPLEMENTARY INFORMATION: Sections 104(i) (7) and (9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended [42 U.S.C. 9604(i) (7) and (9)], provide the Administrator of ATSDR with the authority to conduct pilot studies, epidemiologic and other health studies, and to initiate health surveillance programs to determine the relationship between human exposure to hazardous substances in the environment and adverse health outcomes.

On February 13, 1990, ATSDR published in the **Federal Register** [55 FR 5136] a final rule entitled, "Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities." The primary purpose of that rule, which created a new regulation at 42 CFR part 90, was to set forth general procedures that ATSDR will follow relating to the conduct of health effects studies. Section 90.11 of the regulation, which concerns the reporting of results of health assessments and health effects studies, provides that reports of health effects studies conducted under section 104(i) of the CERCLA shall be available to the general public upon request.

Availability

The reports of the health effects studies and software listed below are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, Virginia 22151, telephone: 1–800–553–6847. There is a charge for these items as determined by NTIS.

Health effects study	NTIS document No.
National Health Risk Communication Training Program for State Health Agency Personnel, ATSDR/HS–93/22.	PB93–192953
Hydrofluoric Acid Spill Symptom Prevalence Study, Texas City, Texas, ATSDR/HS–93/23.	PB93–192961
Mortality Study of a Population in the Vicinity of the Union Chemical Company, South Hope, Maine, ATSDR/HS–93/25.	PB93–193126
National Exposure Registry, Trichloroethylene (TCE) Subregistry Baseline Technical Report, ATSDR/HS–93/24.	PB93–209187
A Retrospective Study of American Indian First Responders Exposed to the 1980 Russett Chemical Company Fire, Fort Hall Indian Reservation, Fort Hall, Idaho, ATSDR/HS–93/27.	PB93–218345
Blood Lead Screening Project, Coffeyville, Kansas, ATSDR/HS–93/26.	PB93–218543
Study of Symptom and Disease, Caldwell Systems, Inc., Hazardous Waste Incinerator, Caldwell County, NC., ATSDR/HS–93/29.	PB93–231041
The Rocky Mountain Arsenal Pilot Exposure Study Part I: Analysis of Exposure to Arsenic and Mercury, ATSDR/HS–93/28.	PB93–231033
Software Package: Software to Facilitate Analysis of Disease Clusters from Epidemiological Data (Version 3.1 for Microcomputers).	PB93–502680GEI

In accordance with 42 CFR 90.11, copies of these final reports have been distributed to the Environmental Protection Agency, the appropriate State and local government agencies, and the affected local communities.

ATSDR previously announced the availability of 21 final reports of health effect studies [55 FR 31445, August 12, 1990; 57 FR 29091, June 30, 1992; and 58 FR 29413, May 20, 1993]. Additional final reports will be announced semiannually in the **Federal Register** as they become available.

Dated: November 24, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–29376 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–70–P

Centers for Disease Control and Prevention

Request for Comments and Secondary Data Relevant to Concentrations of Air Contaminants That Are Immediately Dangerous to Life and Health

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice of request for comments and secondary data.

SUMMARY: NIOSH is requesting comments from all interested parties concerning the development and use of immediately dangerous to life and health (IDLH) concentration values for compounds found in the workplace. The information may include but is not limited to: (1) Descriptions of situations in the workplace where IDLH values are used (e.g., respirator use criteria) and (2) recommendations for methods and criteria that should be used to establish IDLH values.

This information will assist NIOSH in assessing the actual use and current scientific adequacy of the existing IDLH values.

DATES: Comments concerning this notice should be submitted by May 2, 1994.

ADDRESSES: Please submit two copies of any information, comments, suggestions, or recommendations in writing to: Diane M. Manning, Docket Office Manager, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C–14, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Whalen, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C–14, Cincinnati, Ohio 45226, (513) 533–8306.

SUPPLEMENTARY INFORMATION: In 1974, NIOSH and OSHA jointly initiated the development of occupational health standards consistent with section 6(b) of the Occupational Safety and Health Act of 1970 for substances with existing OSHA permissible exposure limits (PELs). This joint effort was called the Standards Completion Program (SCP). The SCP developed 383 substance-specific draft technical standards with supporting documentation that contained technical information and recommendations needed for the promulgation of new occupational health regulations. Although new standards were not promulgated at that time, these data became the basis for the 1981 NIOSH/OSHA Occupational Health Guidelines for Chemical Hazards.[1]

The definition for IDLH that was derived by the SCP was based on the MSHA definition stipulated in 30 CFR 11.3(t). As stated in the documentation to the SCP program,[2] the purpose for establishing an IDLH value was "to ensure that the worker can escape without injury or without irreversible health effects from an IDLH concentration in the event of respiratory protection equipment failure. The IDLH value is considered a maximum concentration above which only a highly reliable breathing apparatus providing maximum worker protection is permitted." In determining IDLH values, the ability of a worker to escape without loss of life or irreversible health effects was considered along with severe eye or respiratory irritation and other deleterious effects (e.g., disorientation or incoordination) that could prevent escape. Although in most cases, escape from a particular worksite could occur in much less than 30 minutes, as a safety margin, the SCP IDLH values were based on the effects that might occur as a consequence of a 30-minute exposure. The IDLH values that were developed by the SCP for 321 substances can be found in the NIOSH Pocket Guide to Chemical Hazards.[3] No IDLH values were established for the remaining 62 SCP substances.

The current NIOSH definition for an IDLH exposure condition, as stated in the NIOSH Respirator Decision Logic,[4] is a condition "that poses a threat of exposure to airborne contaminants when that exposure is likely to cause death or immediate or delayed permanent adverse health effects or prevent escape from such an environment." The purpose of establishing an IDLH exposure concentration is the same given by the SCP: To "ensure that the worker can escape from a given contaminated environment in the event of failure of the respiratory protection equipment." The NIOSH Respirator Decision Logic (RDL) uses the IDLH values developed by the SCP as one of several respirator selection criteria. Under the RDL, the most protective respirators (e.g., a self-contained breathing apparatus equipped with a full facepiece and operated in a pressure-demand or other positive-pressure mode) would be selected for firefighting, exposure to carcinogens, entry into oxygen-deficient atmospheres, in emergency situations, during entry into an atmosphere that contains a substance at a concentration greater than 2,000 times the NIOSH recommended exposure limit (REL) or OSHA PEL, and for entry into IDLH atmospheres.

When the IDLH values currently used by NIOSH as respirator selection criteria were developed in the mid-1970s, only limited toxicological information was available for many of these substances on which to base a determination as to an appropriate IDLH value. Recently, questions have been raised concerning whether all of the IDLH values provide adequate worker protection.[5]

NIOSH is requesting information on the current uses of IDLH values in the workplace to determine the importance of revising existing IDLH values and developing new values. If IDLH values have an important role in the workplace, information on criteria for establishing IDLH values obtained through this notice will assist NIOSH in evaluating the scientific adequacy of the criteria and procedures originally used for establishing IDLH values and proceeding with establishment and revision of IDLH values.

1. Use of IDLH Concentration Values

NIOSH plans to determine (1) if (and how) IDLH values are used to select respirators, including the need for the most protective respirators, and (2) if there are other uses for IDLH values in the workplace. NIOSH requests comments from all interested parties on the following issues which relate to the issues of IDLH values. Responses to the questions will assist NIOSH in ascertaining the range of options and knowledge among environmental and occupational health stakeholders regarding these issues.

a. Are there workplace situations in which IDLH values are used for the selection of respirators? NIOSH is especially interested in situations in which the IDLH value is the only or principal selection criterion that would trigger use of the most protective respirator. Please describe these situations as fully as possible, including (1) a description of the exposure conditions and the method of determining that the IDLH value has been or will be exceeded and (2) an explanation of any special criteria or procedures concerning sub-populations that may be especially susceptible to impairment resulting from respiratory challenges or hazardous breathing environments (e.g., asthmatics).

b. For what purposes, other than respirator selection, are IDLH values used and for what purposes could they be used? For example, IDLH values could be used in hazard analyses to predict the consequences of catastrophic releases of a chemical(s) in the workplace or environment. Please describe other potential or actual uses of IDLH values identifying the uses, characterizing the uses, and explaining the bases for the uses.

c. Are there alternative respirator selection criteria that could replace the use of IDLH concentrations? Please describe fully such criteria and how they would be applied for respirator selection.

d. How would workplace safety and health programs be affected if NIOSH were to remove IDLH values as an element in the NIOSH Respirator Decision Logic? Please describe the effects in terms of changes in procedures, changes in policy, changes in the means for controlling inhalation exposure, and ultimately, effect on worker health. How would workplace safety and health programs be affected if NIOSH were to cease publishing or endorsing IDLH values?

2. Methods or Procedures That May Be Used to Establish an IDLH Value

During the SCP, IDLH values were determined for each substance on a case-by-case basis, using the toxicity data that were available at the time. Whenever possible, IDLH values were based on health effects data from studies of humans exposed for short durations. However, in most instances, a lack of human data necessitated the use of animal toxicity data. When available health effects data for a substance were limited to data from studies of animals exposed for short durations (e.g., 0.5 to 4 hours), the IDLH value was established as the lowest exposure that caused death or an irreversible health effect in any species. When only oral lethal dose (LD) data from animal research were available, the lowest LD data were used to calculate an equivalent exposure to a 70-kg worker breathing approximately 10 cubic meters of air.

This calculation was used as the IDLH value. Because chronic exposure data may have little relevance to acute effects, they were used in determining IDLH values only in conjunction with "competent toxicological judgement." In a number of instances when no animal or human research data were available to directly evaluate the acute toxicity of a substance, IDLH values were established based on the toxicity of chemically and physically analogous substances. In addition, in those instances where the procedures described above yielded a value above the lower explosive limit (LEL), the LEL was selected as the IDLH value.

NIOSH requests comments from interested parties on the following issues which are relevant to the determination of IDLH values. Responses to the questions will assist NIOSH in ascertaining the range of opinions and knowledge among environmental and occupational health stakeholders regarding these issues.

a. IDLH Definition

i. Should one definition of IDLH be used by all Federal agencies (e.g., NIOSH, OSHA, MSHA, and EPA) for all purposes to which the IDLH concept is applied (which may include more than respirator selection)? If so, what should this single definition be? If more than one definition is needed, describe the different definitions and their uses.

ii. Is an IDLH value based on a 30-minute exposure appropriate? If not, what exposure period should be used and why?

iii. What is an appropriate definition of an "irreversible" health effect?

b. Methods of Establishing IDLH Values

i. Are the methods used by the SCP, as stated earlier, optimal for establishing IDLH values? What other approaches could be used?

ii. What factors should be considered when extrapolating health effects from animals to humans? For example, what respiratory minute volumes should be used and what equivalency should be used (e.g., body weight or surface area)?

iii. What toxicological endpoints should be used to establish an IDLH value (e.g., cardiovascular effects, eye irritation, neurotoxicity)? How, if at all, should latent (i.e., long-term) effects such as carcinogenicity or reproductive effects be used?

iv. What short-term toxicity data are needed for setting IDLH values? What testing methods and protocols should be applied to obtain these data (e.g., pharmacokinetics, LC_{50}, LD_{50}, dermal toxicity)?

v. If lethal concentration or lethal dose data are used in determining IDLH values, what are the minimum data needed to set an IDLH value? How should the various types of lethal dose data (e.g., oral, intravenous) be used and how should uncertainty values be applied?

vi. IDLH values derived by the SCP for ten substances (e.g., n-pentane, propane, ethyl ether, and methyl acetylene) are equal to the lower explosive limit (LEL) for those compounds. If the LEL is less than the concentration that may impair escape or cause irreversible health effects, should the IDLH value equal the LEL or should the IDLH value be set solely on the basis of toxicological and health effects data without regard to the LEL? If the LEL is used to derive the IDLH value, as a safety factor, should the IDLH value be set so as not to exceed some percentage of the LEL (e.g., 10%, 25%)? If so, please explain the basis for the proportion of the LEL recommended.

vii. Should the IDLH value be calculated based on (1) the lowest exposure causing death, escape-impairing or irreversible health effects, or (2) the highest exposure not causing death, escape-impairing or irreversible health effects?

viii. Should the IDLH value be calculated as a fixed percentage (e.g., 10%) of a predetermined benchmark dose (e.g., LC_{50} or LC_{10})? What fixed percentage and benchmark dose should be used? If several different lethal dose determinations are reported in the literature, should the lowest of the published benchmark doses be used to establish the IDLH value?

ix. Should escape-impairing endpoints such as impaired visibility caused by dusts or mists, disorientation, and nausea be used to determine an IDLH value? If so, how should the IDLH value be set using these criteria (e.g., what dust concentration should be considered as causing impaired visibility)?

x. Should dermal exposure to mists, vapors, or gases be considered in developing an IDLH concentration? If so, how should this be factored into setting the IDLH value?

xi. How would animal toxicity data be used to identify the concentration at which an "irreversible" health effect occurs? An escape-impairing effect?

xii. If exposure in the workplace to more than one compound with an IDLH value is possible (e.g., NO and NO_2), should an additive or synergistic effect be considered? If so, how should this be determined?

Dated: November 19, 1993.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

References

1. NIOSH/OSHA (1981). Occupational health guidelines for chemical hazards. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 81–123, NTIS Publication No. PB–83–154609.

2. NIOSH (1978). Standards completion program. U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, NTIS Publication No. PB 282–989.

3. NIOSH (1990). NIOSH pocket guide to chemical hazards. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 90–117, NTIS Publication No. PB–91–151183.

4. NIOSH (1987). NIOSH respirator decision logic. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 87–108, NTIS Publication No. PB–87–108.

5. Alexeeff GV, Lipsett MJ, Kizer KW (1989). Problems associated with the use of immediately dangerous to life and health values for estimating the hazard of accidental chemical releases. Am Ind Hyg Assoc J 50(11):598–605.

The references cited in this announcement are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650.

[FR Doc. 93–29323 Filed 11–30–93; 8:45 am]
BILLING CODE 4160–19–P

Food and Drug Administration

[Docket No. 92F–0447]

Enzyme Bio-Systems, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Enzyme Bio-Systems, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of periodic acid and polyethyleneimine as fixing agents for immobilizing those enzymes that are generally recognized as safe or approved as food additives.

DATES: Written comments on petitioner's environmental assessment by January 3, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1A4288) has been filed by Enzyme Bio-Systems, Ltd., 2600 Kennedy Dr., Beloit, WI 53511. The petition proposes to amend the food additive regulations to provide for the safe use of periodic acid and polyethyleneimine as fixing agents for immobilizing those enzymes that are generally recognized as safe or approved as food additives.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before January 3, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 19, 1993.

Douglas L. Archer,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–29401 Filed 11–30–93; 8:45 am]
BILLING CODE 4160–01–F

[Docket No. 91F–0254]

Exxon Chemical Co.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Exxon Chemical Co. to indicate that the petitioned additive, hydrogenated cyclodiene resins is also intended for use in a copolymer of propylene and ethylene containing not less than 94 weight percent propylene for use in contact with food. The previous filing notice indicated that the additive was intended for use only in polypropylene films intended to contact food.

DATES: Written comments on the petitioner's environmental assessment by January 3, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 1, 1991 (56 FR 36814), FDA announced that a petition (FAP 1B4267) had been filed by Exxon Chemical Co., P.O. Box 241, Baton Rouge, LA 70821. In the notice of filing, FDA announced that the petitioner had proposed that the food additive regulations be amended to provide for the safe use of hydrogenated cyclodiene resins for use as a component of polypropylene film intended to contact food.

Upon further review of the petition, the agency notes that the petitioner requested use of the additive for use in copolymers of propylene and ethylene containing not less than 94 weight percent propylene, in addition to its use in polypropylene films.

Therefore, FDA is amending the filing notice of August 1, 1991, to state that the petitioner requested the food additive regulations be amended to provide for the safe use of petroleum hydrocarbon resins (cyclopentadiene-type), hydrogenated, as a component of polypropylene or a copolymer of propylene and ethylene containing not less than 94 weight percent propylene for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets

Management Branch (address above) for public review and comment. Interested persons may, on or before January 3, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 23, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–29458 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93G–0395]

Foreign Domestic Chemicals Corp.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Foreign Domestic Chemicals Corp. has filed a petition (GRASP 3G0403) proposing to affirm that tara gum is generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Written comments by January 31, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Owen Fields, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s) and 409 (21 U.S.C. 321(s) and 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Foreign Domestic Chemicals Corp., 95 Chestnut Ridge Rd., Montvale, NJ 07645 (c/o Delta Analytical Corp.), has filed a petition (GRASP 3G0403) proposing that tara gum be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before January 31, 1994, review the petition and/or file comments with the Dockets Management Branch (address above). Two copies of any comments should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1993.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–29457 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93D–0394]

Public Workshop on Validation of Blood Establishment Computer Systems; Availability of Draft Guideline; Request for Comments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 9, 1993 (58 FR 59488). The document announced a forthcoming 2-day workshop on validation of blood establishment computer systems and also announced the availability of a "Draft Guideline for the Validation of Blood Establishment Computer Systems." Comments were also requested. The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 310–594–3074.

In FR Doc. 93–27510, appearing on page 59488 in the **Federal Register** of Tuesday, November 9, 1993, the following correction is made:

1. On page 59488, in the second column, in line 1, the docket number "93N–0394" is corrected to read "93D–0394".

Dated: November 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–29460 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–01–F

[FDA–225–93–7001]

Memorandum of Understanding Between the Food and Drug Administration and the University of Auburn on Pharmacokinetics and Drugs in Food-Producing and Other Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and Auburn University (AU). The purpose of this MOU is to encourage cooperative research dealing with pharmacokinetics and the disposition of a variety of drugs

in food-producing and other animals. This MOU will assure that recognized expertise in the areas of pharmacokinetics and drug disposition in animals is made available to the Center for Veterinary Medicine, Office of Science, Division of Animal Research scientists.

DATES: The agreement became effective on September 8, 1993.

FOR FURTHER INFORMATION CONTACT: David D. Wagner, Center for Veterinary Medicine (HFV–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–504–8500.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this memorandum of understanding.

Dated: November 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

Memorandum of Understanding Between the Food and Drug Administration, Center for Veterinary Medicine, Office of Science, Division of Animal Research, Beltsville, MD 20705, and the Department of Pharmacal Sciences, School of Pharmacy, Auburn University, Auburn, AL 36849

I. Purpose

The Division of Animal Research (DAR) and Auburn University (AU) have agreed to conduct cooperative research dealing with the pharmacokinetics and the disposition of a variety of drugs in food-producing and other animals.

II. Background

At present, the Division of Animal Research, Office of Science, Beltsville lacks the expertise and sophisticated computer pharmacokinetic programs available to scientifically design and provide proper analysis of data originated from studies in the area of drug disposition in animals. This agreement is needed to assure that recognized expertise in that area is made available to DAR scientists.

III. Substance of the Agreement

A. *FDA–CVM–OSB Agrees to:*

Provide scientific personnel for the purpose of designing, conducting, supervising, and cooperating in experiments, studies, and programs.

B. *Auburn University Agrees to:*

Make available the expertise of Dr. W. R. Ravis to cooperate with all aspects of the intended studies from their inception to proper design, data analysis, and pharmacokinetic interpretation.

C. *It is Mutually Agreed:*

1. To review jointly the results of the program, on an annual basis, and to evaluate its accomplishments and progress. Appropriate changes can be instituted upon concurrence of both parties.
2. To confer on the nature of the experiments to be conducted.
3. That journal authorship will depend on the extent of the involvement of both parties.
4. This agreement is to describe in general terms the basis on which the parties will cooperate in experimental studies and programs and will not create binding enforceable financial obligations against either party. Each party will handle and expend its own funds in accordance with the appropriate departmental rules and regulations.
5. The responsibility of the cooperating parties are contingent upon funds being available from which expenditures may be legally made.
6. Upon termination, property contributions, if any, shall be returned to the contributing party unless the other party purchases the contributed property at current market value.

IV. Names and Addresses of Participating Parties

A. Food and Drug Administration, Center for Veterinary Medicine, Office of Science, Division of Animal Research, Beltsville, MD 20705.

B. Auburn University, School of Pharmacy, Department of Pharmacal Sciences, Auburn University, Auburn, AL 36849.

V. Liaison Officers

A. *Liaison Officer for AU:* Dr. William R. Ravis, Professor and Head, Department of Pharmacal Sciences, School of Pharmacy, Auburn University, Auburn, AL 36849–5501, Phone: 205–844–8337.

B. *Liaison Officer for FDA–CVM–OSB:* Dr. Waldir M. Pedersoli, Veterinary Research Pharmacologist, Division of Animal Research, BARC-East, Building 328–A, Phone: 301–504–8500.

VI. Period of Agreement

This agreement becomes effective upon acceptance by both parties and will continue in effect for three years. It may be revised by mutual written consent or terminated by either party upon a 30-day advance written notice to the other party.

Approved and Accepted for Auburn University

By: Thomas Riley

Title: Acting Dean, School of Pharmacy

Date: September 8, 1993

Approved and Accepted for the Food and Drug Administration

By: Richard H. Teske

Title: Acting Director, Center for Veterinary Medicine

Date: August 19, 1993

[FR Doc. 93–29459 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

United Network for Organ Sharing Allocation Principles

AGENCY: Health Resources and Services Administration, PHS.

ACTION: General notice—request for comments; public hearing.

SUMMARY: Notice is hereby given that the United Network for Organ Sharing (UNOS), a private organization that operates the Organ Procurement and Transplantation Network (OPTN) under contract with the Health Resources and Services Administration (HRSA), pursuant to section 372 of the Public Health Service (PHS) Act, has made available for public comment a working document describing basic principles of allocation, policy objectives, and performance measures for evaluating the organ allocation system. In addition, UNOS will hold a public hearing on January 24–25, 1994 at the Hotel Sofitel in Chicago for individuals and organizations who wish to present oral testimony to support their written comments regarding the working document. Because UNOS, as the PHS contractor under section 372, has certain responsibility affecting participants in the Medicare and Medicaid programs, HRSA has determined that it is in the public interest for this notice to be issued in order to enhance public awareness of the policies of UNOS and encourage public comment on these policies.

SUPPLEMENTARY INFORMATION: The OPTN is required to establish criteria for allocating organs for transplantation and to provide the public an opportunity to comment with respect to such criteria. Additionally, HRSA requires that the OPTN provide assistance to organ procurement organizations and transplant centers for the matching and allocation of donor organs equitably among transplant patients. The working document will be utilized by OPTN committees and the OPTN Board of Directors in evaluating allocation policies and procedures for possible revision.

Distribution of and Comments on the Working Document

Copies of the working document can be obtained by contacting Mr. Gene Pierce, Executive Director, UNOS, 1100 Boulders Parkway, Suite 500, Richmond, Virginia 23225; Telephone (804) 330–8504; Fax (804) 330–8517. Written comments regarding the document should be addressed to Douglas Norman, M.D., President,

UNOS, at the same address. A copy of the written comments should also be sent to Mrs. Judith B. Braslow, Director, Division of Organ Transplantation, 5600 Fishers Lane, room 11A–22, Rockville, Maryland 20857.

Public Hearing

Individuals and organizations who wish to present oral testimony regarding the working document at the public hearing on January 24–25, 1994 at the Hotel Sofitel in Chicago should indicate such in their written comments to Dr. Norman and Mrs. Braslow. Selected individuals will be asked to testify; however, all written comments submitted by the January 10 deadline will be included in the record.

DATES: To receive consideration, written comments regarding the working document should be mailed to the above UNOS address and must be received by UNOS no later than January 10, 1994.

Dated: November 24, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–29400 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of C.I. Pigment Red 23

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of C.I. Pigment Red 23, used in coloring paints, printing inks, linoleum, and as a coloring agent for textile printing, rubber, plastics, alkyl resin enamels, lacquers, emulsion paints, and paper.

Two year toxicology and carcinogenesis studies were conducted by administering to male and female rats and mice doses of 0, 10,000, 25,000, or 50,000 ppm C.I. Pigment Red 23 in feed for 103 weeks.

Under the conditions of these 2-year feed studies, there was equivocal evidence of carcinogenic activity [1] of C.I. Pigment Red 23 in male F344 rats as evidenced by a marginally increased incidence of renal tubule cell neoplasms. There was no evidence of carcinogenic activity of C.I. Pigment Red 23 in female F344 rats fed diets containing 10,000, 25,000, or 50,000 ppm. Mononuclear cell leukemia occurred with a decreased incidence in male and female rats receiving C.I. Pigment Red 23. There was no evidence of carcinogenic activity of C.I. Pigment Red 23 in male and female B6C3F1 mice fed diets containing 10,000, 25,000, or 50,000 ppm.

The severity of kidney nephropathy was increased in exposed male rats. In mice, C.I. Pigment Red 23 caused an increase in hyperkeratosis and epithelial hyperplasia of the forestomach.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of C.I. Pigment Red 23 in (CAS No. 6471–49–4) in F344 Rats and B6C3F1 Mice (Feed Studies) (TR–411) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: November 22, 1993.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 93–29317 Filed 11–30–93; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–93–1042; FR–3541–D–01]

Delegation of Authority for the Emergency Low Income Housing Preservation Act of 1987, as Amended by the Low Income Housing Preservation and Resident Homeownership Act of 1990, and as Further Amended by the Housing and Community Development Act of 1992

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the Deputy Assistant Secretary for Multifamily Housing the Secretary's power and authority with respect to title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income and Housing Preservation Act of 1987 ("ELIHPA"), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*), subject to specified exceptions.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Telephone (202) 708–300; TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In order to prevent the potential depletion of the nation's privately-owned low income housing stock through prepayment of HUD-insured or assisted mortgages, Congress enacted title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income Housing Preservation Act of 1987 ("ELIHPA"). ELIHPA established an incentive program governing the prepayment of mortgages and the cancellation of mortgage insurance contracts on eligible low income multifamily housing projects in cases where, but for ELIHPA, owners would be free to prepay the HUD-insured or assisted mortgages without the Department's approval.

In 1990, Congress enacted subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), and instituted a permanent, comprehensive preservation program. Its basic objectives are to assure that the "prepayment" inventory of assisted housing is preserved and remains affordable to low income households and to provide opportunities for tenants to become homeowners, while at the same time fairly compensating owners for the value of their properties.

LIHPRHA effectively repealed and replaced ELIHPA, except to the extent that LIHPRHA contained a transition provision permitting certain owners to elect to proceed under ELIHPA rather than LIHPRHA. Because of this transition provision, the Department of Housing and Urban Development (the "Department" or "HUD") is currently administering preservation programs for eligible low income housing under both LIHPRHA and ELIHPA.

This notice delegates all power and authority of the Secretary of Housing and Urban Development for ELIHPA

and LIHPRHA concurrently to the Assistant Secretary for Housing-Federal Housing Commissioner and the Deputy Assistant Secretary for Multifamily Housing, except for the power to sue and be sued.

The authority delegated to the Deputy Assistant Secretary for Multifamily Housing under this delegation does not include the power to issue or waive rules and regulations. Also, the Deputy Assistant Secretary for Multifamily Housing is not authorized to redelegate the power and authority delegated under this delegation. The Assistant Secretary for Housing-Federal Housing Commissioner may not redelegate to employees of the Department the power and authority to issue or waive rules and regulations.

Whenever a request to waive a regulatory provision relating to civil rights is being considered, the Assistant Secretary for Housing-Federal Housing Commissioner shall consult with the Assistant Secretary for Fair Housing and Equal Opportunity prior to issuing such a waiver.

The Secretary of Housing and Urban Development hereby delegates the following authority:

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the Deputy Assistant Secretary for Multifamily Housing all the power and authority of the Secretary with respect to title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income and Housing Preservation Act of 1987 ("ELIHPA"), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*), subject to specified exceptions.

Section B. Authority Excepted

The authority delegated to the Assistant Secretary for Housing-Federal Housing Commissioner under this delegation does not include the power and authority to sue and be sued. The authority delegated to the Deputy Assistant Secretary for Multifamily Housing under this delegation does not include the power to sue and be sued or the power to issue or waive rules and regulations.

Section C. Authority to Redelegate

The Assistant Secretary for Housing-Federal Housing Commissioner may redelegate to employees of the Department any of the power and authority delegated under this delegation, except the authority to issue or waive rules and regulations. The Deputy Assistant Secretary for Multifamily Housing is not authorized to redelegate the power and authority delegated under this delegation.

Section D. Consultation With the Assistant Secretary for Fair Housing and Equal Opportunity

Whenever a request to waive a regulatory provision relating to civil rights is being considered, the Assistant Secretary for Housing-Federal Housing Commissioner shall consult with the Assistant Secretary for Fair Housing and Equal Opportunity prior to issuing such a waiver.

Authority: Title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), and as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 22, 1993.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 93–29420 Filed 11–30–93; 8:45 am]

BILLING CODE 4210–32–P

[Docket No. D–93–1041; FR–3609–D–01]

Amendment of Delegation of Authority Designating HUD Officials to Act as Attesting Officers and Authorizing Officials to Cause the Departmental Seal To Be Affixed and to Authenticate Copies of Documents

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of amendment of delegation of authority.

SUMMARY: This notice amends a delegation of authority designating officials of the Department of Housing and Urban Development to act as Attesting Officers and authorizing officials to cause the seal of the Department to be affixed to documents and certify that a copy of any book, paper, microfilm, or other document is a true copy to add the Associate General Counsel for Equal Opportunity and Administrative Law and the legal technicians assigned to the Fair Housing Division of the Office of Equal Opportunity and Administrative Law.

EFFECTIVE DATE: November 10, 1993.

FOR FURTHER INFORMATION CONTACT: Harry L. Carey, Assistant General Counsel for Fair Housing, Office of General Counsel, room 9238, 451 7th Street, SW., Washington, DC 20410, voice, (202) 708–0570. The telecommunications device for the deaf (TDD) number is (202) 708–9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The delegation of authority published in the **Federal Register** on April 15, 1987 at 52 FR 12259 (Docket No. D–87–836; FR–2341) designating officials of the Department of Housing and Urban Development to act as Attesting Officers and authorizing officials to cause the seal of the Department to be affixed to documents and certify that a copy of any book, paper, microfilm, or other document is a true copy is being amended to add the Associate General Counsel for Equal Opportunity and Administrative Law and the legal technicians assigned to the Fair Housing Division of the Office of Equal Opportunity and Administrative Law.

Accordingly, the delegation of authority published in the **Federal Register** on April 15, 1987 at 52 FR 12259 (Docket No. D–87–836; FR–2341) is amended as follows:

Section A. Amendment of Delegation of Authority

Section A of the delegation of authority published on April 15, 1987 at 52 FR 12259 (Docket No. D–87–836; FR–2341) is amended to add the following:

19. Associate General Counsel for Equal Opportunity and Administrative Law.

20. Legal technicians assigned to the Fair Housing Division of the Office of Equal Opportunity and Administrative Law.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 10, 1993.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 93–29419 Filed 11–30–93; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. D–3–1043; FR–3542–01]

Redelegation of Authority for Approving Plans of Action Under the Emergency Low Income Housing Preservation Act of 1987 as Amended by the Low Income Housing Preservation and Resident Homeownership Act of 1990 and as Further Amended by the Housing and Community Development Act of 1992

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates to Regional Administrators-Regional Housing Commissioners the authority of the Assistant Secretary for Housing-Federal Housing Commissioner to approve plans of action submitted by owners pursuant to 24 CFR part 248, which implements title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income and Housing Preservation Act of 1987 ("ELIHPA"), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*). Regional Administrators-Regional Housing Commissioners may then, at their option, redelegate this authority to Field Office Managers, or in the case of combined regional and field offices, to Regional Directors of Housing.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Telephone (202) 708–2300; TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: ELIHPA and LIHPRHA require owners of eligible low income housing who intend to prepay the mortgage, terminate the mortgage insurance contract, accept incentives in exchange for extending the low income affordability restrictions, or transfer the project to a qualified purchaser, to submit a plan of action providing for such prepayment, termination, extension, or transfer. Section 225 of ELIHPA and sections 218, 222 and 226 of LIHPRHA provide the Secretary with the authority to approve plans of action subject to the criteria set forth therein. The authority to approve plans of action also includes the incidental authority to issue notice of deficiency letters, preliminary approval of plans of action, and final approval of plans of action.

Under a delegation of authority published elsewhere in today's Federal Register, the Secretary of Housing and Urban Development delegated to the Assistant Secretary for Housing-Federal Housing Commissioner all power and authority with respect to ELIHPA and LIHPRHA.

Through this Notice, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates the authority, as set forth in ELIHPA and LIHPRHA, to approve plans of action to Regional Administrators-Regional Housing Commissioners who, at their own option, may redelegate the authority to the Regional Directors of Housing and Field Office Managers.

Section A. Authority Redelegated

The Assistant Secretary for Housing-Federal Housing Commissioner redelegates to Regional Administrators-Regional Housing Commissioners the authority, as set forth in title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income and Housing Preservation Act of 1987 ("ELIHPA"), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*), to approve plans of action.

Section B. Authority Excepted

The authority redelegated to the Regional Administrators-Regional Housing Commissioners does not include the authority to issue final approval of plans of action prior to receipt of confirmation of assignment of subsidy funds, where such funds are part of the plan of action.

Section C. Authority to Redelegate

Regional Administrators-Regional Housing Commissioners may, at their own option, redelegate the authority in section A above to the Regional Directors of Housing and Field Office Managers.

Section D. Redelegations of Authority Revoked

The following redelegations of authority are revoked in their entirety:

1. D–91–954, FR–3077, appearing in the Federal Register on July 23, 1991 at 56 FR 1991.
2. D–91–960, appearing in the Federal Register on September 9, 1991, at 56 FR 46006.
3. D–92–979, appearing in the Federal Register on March 10, 1992, at 57 FR 8465.

Authority: Title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 22, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner

[FR Doc. 93–29421 Filed 11–30–93; 8:45 am]

BILLING CODE 4210–27–P

[Docket No. D–93–1044; FR–3543–D–01]

Redelegation of Authority With Respect to Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils Under the Emergency Low Income Housing Preservation Act of 1987, as Amended by the Low Income Housing Preservation and Resident Homeownership Act of 1990 and as Further Amended by the Housing and Community Development Act of 1992

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Housing-Federal Housing Commissioner redelegates to HUD Regional Housing Directors the authority to award technical assistance planning grants under title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income and Housing Preservation Act of 1987 ("ELIHPA"), as amended by Subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), as further amended by title III of the Housing and Community

Development Act of 1992 (12 U.S.C. 4141 *et seq.*), for projects being preserved under ELIHPA and LIHPRHA; to HUD Field Office Managers the authority to execute grant agreements under ELIHPA, as amended, for projects being preserved under ELIHPA and LIHPRHA; and to HUD Field Office Resident Initiatives Specialists the authority to approve grantees requests for the drawdown of grant funds under ELIHPA, as amended, for projects being preserved under ELIHPA and LIHPRHA.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410. Telephone (202) 708–2300; TDD (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: ELIHPA, as amended, authorizes the Secretary to provide grants to tenants and community-based nonprofit organizations for education, training and capacity building in order to enable these groups to purchase and operate eligible low income housing under ELIHPA and LIHPRHA. A Notice of Fund Availability entitled "Low Income Housing: Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils" was published on September 3, 1992 at 57 FR 40570 ("1992 NOFA") which sets forth the criterion for receiving technical assistance grants as well as establishing the authorized uses for the grant funds.

Under a delegation of authority published elsewhere in today's Federal Register, the Secretary of Housing and Urban Development delegated to the Assistant Secretary for Housing-Federal Housing Commissioner all power and authority with respect to ELIHPA, as amended. Grant funds may only be awarded for projects which are being preserved under either ELIHPA or LIHPRHA and may only be used to assist resident groups, resident councils, community groups, and community-based nonprofit organizations to receive the education and technical assistance necessary to successfully purchase and operate eligible low income housing pursuant to ELIHPA and LIHPRHA.

Through this notice, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates the authority to award technical assistance planning grants, execute grant agreements and approve the drawdown of grant funds.

Section A. Authority Redelegated

A. Each HUD Regional Housing Director is authorized to approve applications and award grants for technical assistance and planning pursuant to title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income and Housing Preservation Act of 1987 ("ELIHPA"), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*).

B. Each HUD Field Office Manager is authorized to execute grant agreements for technical assistance grants awarded pursuant to title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), ELIHPA, as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), LIHPRHA, as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*).

C. Each HUD Field Office Resident Initiatives Specialist is authorized to approve grantee requests for the drawdown of grant funds for technical assistance pursuant to title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), ELIHPA, as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), LIHPRHA, as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*).

Authority: Title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 22, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner

[FR Doc. 93–29422 Filed 11–30–93; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

National Biological Survey; Establishment of Organization

AGENCY: National Biological Survey, Department of the Interior.

ACTION: Notification of establishment of the National Biological Survey.

SUMMARY: This notice is issued in accordance with the provisions of 5 U.S.C. 552(a)(1). The Secretary of the Interior has issued an order establishing a new organizational unit, the National Biological Survey. The order making this organization change is published in its entirety below. While the order was signed on September 29, 1993, it was effective upon enactment of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1994. This legislation, Public Law 103–138, was signed on November 11, 1993.

ADDRESSES: National Biological Survey, Department of the Interior, 1849 C St., NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: F. Eugene Hester, Deputy Director, National Biological Survey, Department of the Interior, telephone 202–208–3733.

Dated: November 23, 1993.

F. Eugene Hester,

Deputy Director, National Biological Survey.

Order No. 3173

Subject: Establishment of the National Biological Survey

Sec. 1 *Purpose.* The purpose of this Order is to establish the National Biological Survey under the supervision of the Assistant Secretary for Fish and Wildlife and Parks. The mission of the National Biological Survey is to gather, analyze, and disseminate the biological information necessary for the sound stewardship of our Nation's natural resources and to foster understanding of biological systems and the benefits they provide to society. To accomplish this mission, the National Biological Survey will (1) perform research in support of biological resource management; (2) inventory, monitor, and report on the status and trends in the Nation's biotic resources; and (3) develop the ability and resources to transfer the information gained in research and monitoring to resource managers and to others concerned with the care, use, and conservation of the Nation's resources. This Order supersedes Order No. 3165, Organizational Preparations for the Creation of the National Biological Survey, issued on May 17, 1993.

Sec. 2 *Authority.* This Order issued in accordance with the authority provided by Sections 2 and 5 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262: 5 U.S.C. App.).

Sec. 3 *Establishment and Transfer of Functions.* The National Biological Survey (NBS) is hereby established. Functions necessary to perform the mission of NBS are

transferred to the NBS from the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Minerals Management Service, Office of Surface Mining Reclamation and Enforcement, U.S. Geological Survey, and Bureau of Reclamation.

Sec. 4 *Organization.* The Director of the NBS shall be under the supervision of the Assistant Secretary for Fish and Wildlife and Parks. The NBS shall consist of the following functional components:

a. The Office of the Director, with a Deputy Director and an Executive Secretary to a Science Board and a Policy Board.

b. The Office of External Affairs, with Divisions of Congressional Affairs, Public Affairs, and International Affairs, and a Controlled Correspondence Staff.

c. The Office of the Assistant Director for Budget and Administration, with an Office of Equal Opportunity Programs; Divisions of Personnel Management, Management Assistance, Budget, Finance, and Procurement; and a Safety Staff.

d. The Office of the Assistant Director for Research, with Divisions of Cooperative Research, Species Biology, Population Dynamics, and Ecosystems Research.

e. The Office of the Assistant Director for Information and Technology Services, with Divisions of Information Management, and Information and Technology Transfer.

f. The Office of the Assistant Director for Inventory and Monitoring, with Divisions of Ecosystem Inventory and Assessment; Population Inventory and Monitoring; and Inventory, Standards and Protocol Development.

g. Western, Mid-Continent, Southern and Eastern Ecoregions, each to be directed by a Regional Director reporting to the Office of the Director.

h. Cooperative Research Units reporting to the Division of Cooperative Research within the Office of the Assistant Director for Research.

i. Research Centers reporting to a Regional Director.

j. Other headquarters components and field units to be established by the Director.

Sec. 5 *Delegations.* The Director of the NBS is delegated, through the Assistant Secretary for Fish and Wildlife and Parks, the administrative and program management authority necessary to implement the mission of the NBS. This delegation is subject to the limitations contained in Part 200 of the Departmental Manual.

Sec. 6 *Administrative Provisions.* The Assistant Secretary—Policy, Management and Budget will take appropriate steps to transfer the personnel, funds and property necessary to implement this Order. The Director of the NBS will enter into any necessary agreements with other bureaus and offices of the Department of the Interior for the provision of any administrative support functions which the NBS will not provide within its own organization.

Sec. 7 *Effective Date.* This Order is effective upon establishment of budget authority for the National Biological Survey, either through enactment of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1994 or an appropriate Continuing Resolution, but not before October 1, 1993. This Order will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded or revoked, whichever comes first. In the absence of the foregoing actions, the provisions of this Order will terminate and be considered obsolete on October 1, 1994.

Dated: September 29, 1993.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93–29372 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[CA–066–4331–13]

Closure and Restrictions on Public Land; Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure and restrictions on public land for the protection of historic resources.

SUMMARY: The purpose of this notice is to establish a supplemental rule to protect historic resources found within divisional camps of the former Desert Training Center and to protect visitors to the camps. For the purposes of this supplemental rule, historic resources include any structure, artifact, or remains associated or included within the camps of the Desert Training Center. The area described in this notice is closed to the removal and collection of any historic artifacts in the entire area and to the discharge of firearms within a specified distance of the camps, except for the lawful taking of game. Therefore, no person shall remove, collect, transport or possess any historic artifact from public lands administered by the Bureau of Land Management located within Camp Young, Camp Coxcomb, Camp Rice, and Camp Granite in Riverside County and Camp Iron Mountain, Camp Clipper and Camp Ibis in San Bernardino County, except by permit issued by the BLM.

The discharge of firearms will be prohibited in and within a radius of ½ mile of these camps, except in the lawful taking of game.

The legal description of the closure is as follows:

San Bernardino Meridian, California

Camp Rice

T. 1S., R. 21E.
Secs. 20–23

Camp Young

T. 6S., R. 11E.
Secs. 2, 12, 14
T. 6S., R. 12E.
Secs. 6, 8

Camp Coxcomb

T. 2S., R. 16E.
Sec. 35
T. 3S., R. 16E.
Secs. 1, 2, 10–15, 22, 25–27

Camp Granite

T. 1S., R. 17E.
Sec. 25
T. 1S., R. 18E.
Secs. 29–32

Camp Iron Mt.

T. 1S., R. 17E.
Secs. 1, 11–14
T. 1S., R. 18E.
Secs. 6, 7

Camp Clipper

T. 8N., R. 16E.
Secs. 2, 11–14, 23

Camp Ibis

T. 10N., R. 20E.
Sec. 24
T. 10N., R. 21E.
Secs. 7, 8, 18–20
T. 11N., R. 20E.
Secs. 32, 33

A map of the area described above may be viewed in the Needles or Palm Springs Resource Area offices. This closure is necessary to protect historic resources within the above listed camps.

EFFECTIVE DATE: This clause is effective December 1, 1993, and shall remain in effect until rescinding by the authorized officer.

FOR FURTHER INFORMATION CONTACT:

Mike Mitchell, Archaeologist, Palm Springs-South Coast Resource Area, 63–500 Garnet Ave., North Palm Springs, CA 92258–2000, (619) 251–0812.

SUPPLEMENTARY INFORMATION: Authority for this Closure and Restriction Order may be found in 43 CFR 8365.1–6. Violation of this closure is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Resource monitoring over the last several years has shown that historic artifact collection has impacted the integrity of the above named camps. Also, because of increased visitation, indiscriminate shooting has endangered the public in the above listed camps. Individuals duly licensed and hunting for game in accordance with State regulations and hunting rules are exempt from this Closure Order.

Dated: November 19, 1993.

Al Wright,

Acting State Director.

[FR Doc. 93–29380 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–4210–05; N–29959 and N–58055]

Termination of Recreation and Public Purposes Classification and Transfer of Land to Goshute Indian Reservation; Nevada

November 19, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Recreation and Public Purposes (R&PP) Classification N–29959 is terminated and pursuant to section 3(c) of Public Law 103–93 certain public land in Nevada is declared to be part of the Goshute Indian Reservation.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, telephone 702–785–6526.

SUPPLEMENTARY INFORMATION: R&PP Classification N–29959 which affects the following described land is hereby terminated in its entirety:

Mount Diablo Meridian

T. 30 N., R. 69 E.,
Sec. 34, lots 5, 6, 7, 9, 11 and 14.

The area described contains 16.12 acres in Elko County. The classification was established in order to lease the land to the State of Nevada Department of Transportation for the Ferguson Springs Maintenance Station. The lease expired on September 2, 1990.

Further, section 3(c) of Public Law 103–93, dated October 1, 1993, and cited as the "Utah Schools and Lands Improvement Act of 1993", an Act to provide for the exchange of certain lands within the State of Utah, and for other purposes, (Act) declared the above described land, together with all improvements thereon, to be part of the Goshute Indian Reservation in Nevada and to be held in trust for the Goshute Indian Tribe.

The Act states there are five acres in the above described land; however, the Bureau of Land Management's Nevada State Office official survey plat indicates there are 16.12 acres in the parcel.

By virtue of the fact the land is now part of an Indian reservation, the land is segregated from all forms of appropriation and entry under the public land laws, including the mining laws, the mineral leasing laws, and the Materials Sale Act of 1947.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93–29383 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–HC–M

[NM–920–4210–06–NMNM 0557261]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service proposes that a 644.53-acre withdrawal for La Cueva Recreation Site Expansion and Sandia Crest Tramway Recreation Site continue for an additional 20 years. The lands will remain closed to mining, but have been and will remain open to surface entry and mineral leasing.

DATES: Comments should be received by March 1, 1994.

ADDRESSES: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, 505–438–7501.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505–438–7594.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the existing land withdrawal made by Public Land Order No. 3874 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988).

The lands are described as follows:

New Mexico Principal Meridian

Cibola National Forest

T. 11 N., R. 4 E.,
Sec. 2, lots 7 and 8, N½SW¼, S½SW¼SW¼, W½W½SW¼SE¼SW¼, and E½SE¼SE¼SE¼;
Sec. 3, lots 7, 8 and E½SE¼;
Sec. 10, lots 11 and 12;
Sec. 11, lots 12 to 14, inclusive, E½E½NE¼NE¼, W½W½NE¼NE¼, NW¼NW¼, and SE¼NE¼.
Sec. 12, less HES 268, that portion of the S½ lying outside the Sandia Mountain Wilderness Area (unsurveyed).

The areas described aggregate 644.53 acres in Bernalillo County.

The purpose of the withdrawal is to protect La Cueva Recreation Site Expansion and Sandia Crest Tramway Recreation Site. The withdrawal segregates the lands from location and entry under the mining laws, but not the public land laws or the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Realty, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: November 19, 1993.

Gilbert J. Lucero,

Acting State Director.

[FR Doc. 93–29382 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–FB–M

[CO–920–93–4120–03; COC–0125366]

Colorado; Availability of the Record of Decision for the Coal Preference Right Lease Application C–0125366

ACTION: Pursuant to the regulations at 43 CFR 3430.5–1 and 40 CFR 1505.2, the Bureau of Land Management (BLM) has prepared a Record of Decision (decision) for coal preference right lease application (PRLA) C–0125366. Copies of the decision are now available to the public.

SUMMARY: A Record of Decision for coal PRLA C–0125366 has been prepared documenting BLM's decision to reject the application. BLM's decision is based on a determination that the Final Showing submitted by the applicants, R.W. Chapman and P.E. Riebold, failed to demonstrate that commercial quantities of coal were discovered on the PRLA within the terms of the Prospecting Permit.

Persons or organizations wishing to obtain copies of the decision may contact the Bureau of Land Management at the address below.

DATES: Copies of the decision are available as of December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Copies of the decision are available on request from the Colorado State Office (CO–923), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, or by calling Donna Kronauge at (303) 239–3757.

SUPPLEMENTARY INFORMATION: The lease application was originally filed in August 1969. An Initial Showing for the application was accepted as complete in December 1980. As a result of BLM

policies based on the amended court order in the case of *Natural Resources Defense Council* v. *Berklund*, BLM prepared an Environmental Impact Statement (EIS) in cooperation with the Office of Surface Mining Reclamation and Enforcement (OSM). The EIS was filed with EPA in January 1989. A Final Showing was requested of the applicants late in 1989 and filed in February 1990. This decisions reflects the results of BLM's analysis of the Final Showing.

Dated: October 31, 1993.

Bob Moore,

State Director.

[FR Doc. 93–29335 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–4210–05; N–57599]

Reality Action: Lease/Purchase for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose lease/purchase.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Calvary Chapel Spring Valley proposes to use the land for church facilities.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E., M.D.M.
Sec. 34: SE¼NE¼SW¼NE¼,
SW¼NW¼SE¼NE¼,
NW¼NW¼SE¼NE¼,
NE¼NW¼SE¼NE¼.

Containing 10.00 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. An easement 30.00 feet in width along the south boundary with a 15.00 foot radius spandrel at the southwest corner of the SE¼NW¼SE¼NE¼, and a 15.00 foot radius spandrel at the southwest corner of the SW¼NE¼SW¼NE¼, in favor of Clark County for roads, public utilities and flood control purposes.

2. An easement 30.00 feet in width along the north and west boundaries of the NW¼NW¼SE¼NE¼, in favor of Clark County for roads, public utilities and flood control purposes.

3. Those rights for a road, public utilities and flood control purposes which have been granted to Clark County by Permit No. N–55022 the under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: November 19, 1993.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 93–29347 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Draft Environmental Impact Statement and General Management Plan/ Development Concept Plan, Bent's Old Fort National Historic Site, Colorado

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of draft environmental impact statement and general management plan/development concept plan for Bent's Old Fort National Historic Site.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a draft Environmental Impact Statement and General Management Plan/ Development Concept Plan (DEIS/GMP/ DCP) for Bent's Old Fort National Historic Site, Colorado.

DATES: The DEIS/GMP/DCP will remain available for public review through February 11, 1994.

ADDRESSES: Comments on the DEIS/ GMP/DCP should be sent to the Superintendent, Bent's Old Fort National Historic Site, 35110 Highway 194 East, La Junta, Colorado 81050–9523. Public reading copies of the DEIS/ GMP/DCP will be available for review at the following locations:

Office of the Superintendent, Bent's Old Fort National Historic Site, 35110 Highway 194 East, LaJunta, Colorado 81050–9523, Telephone: (719) 384–2596.

Division of Planning and Compliance, Rocky Mountain Regional Office, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80225, Telephone: (303) 969–2828.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The DEIS/ GMP/DCP analyzes three alternatives, including no action, alternative one, and the proposal to direct the management and development of Bent's Old Fort for a period of 10 to 15 years. The alternatives address issues currently facing the park, including visitor use, resource management, and operational functions. The no-action alternative would continue current management practices and resource and interpretive programs. Alternative one would expand the scope of the interpretive program, creating a self-service, self-interpretation oriented visitor experience. It would maintain the historic character of the site and improve overall operational and administrative working environments, while limiting physical development to small additions of space and renovation of existing spaces. The proposal would expand the scope of the interpretive program, create an interactive interpretive atmosphere through implementation of a visitor center, maintain the historic character of the site, and improve overall operational and administrative working

environments by adding appropriate facilities.

The DEIS/GMP/DCP in particular evaluates the environmental consequences of the proposed action and the other alternatives on geology/soils, vegetation, prime and unique farmlands, wildlife, threatened and endangered species, water resources/quality, floodplains and wetlands, air quality, noise quality, cultural resources, visitor use, and socioeconomic resources/surrounding land uses.

FOR FURTHER INFORMATION CONTACT: Superintendent, Bent's Old Fort National Historic Site, at the above address and telephone number.

Dated: November 15, 1993.

Ronald E. Everhart,

Acting Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 93–29453 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–70–P

Final Environmental Impact Statement/General Management Plan/Development Concept Plan, Timpanogos Cave National Monument, Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Final Environmental Impact Statement/General Management Plan/Development Concept Plan for Timpanogos Cave National Monument.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement/General Management Plan/Development Concept Plan (FEIS/GMP/DCP) for Timpanogos National Monument, Utah.

DATES: A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the FEIS/GMP/DCP.

ADDRESSES: Public reading copies of the FEIS/GMP/DCP will be available for review at the following locations:

Office of the Superintendent, Timpanogos Cave National Monument, R.R. 3, P.O. Box 200, American Fork, UT 84003–9803, Telephone: (801) 756–5238.

Division of Planning and Compliance, Rocky Mountain Regional Office, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80225,Telephone: (303) 969–2828.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: In February 1993, the National Park Service released for a 60-day public review a Draft Environmental Impact Statement/General Management Plan/Development Concept Plan (DEIS/GMP/DCP) that evaluated five alternatives for the future management, use, and development of Timpanogos Cave National Monument. These alternatives were designed to resolve existing issues while considering the management objectives as presented in the monument's Statement for Management.

The alternatives represented a diverse range of options including: (1) Proposed Plan—Maintain a full range of visitor and administrative services and facilities but relocate the majority of them outside the monument and implement a visitor transportation system, (2) Alternative A—Maintain a full range of visitor and administrative services but confine all development proposals to the area within the monument, (3) Alternative B (Minimum Action)—Limit development to the minimum essential for accommodating visitors to the cave and meeting administrative needs, (4) Alternative C (Mothball/Caretaker)—Until adequate funding becomes available to move facilities outside the monument, vacate and secure access to all structures and permit access to the cave only for qualified research purposes. Another local, Federal, or State agency would be responsible for overseeing the area under a memorandum of agreement, and (5) Alternative D (no action)—Under this alternative, existing facilities and management actions would remain unchanged.

The DEIS/GMP/DCP in particular evaluated the environmental consequences of the proposed action and the other alternatives on water resources, floodplains, wetlands, geology, soils, vegetation, wildlife, threatened and endangered species, air quality, archeological, historical and ethnographic resources, visitor use, socioeconomic data, other agencies, management and operations, and cumulative impacts. The environmental consequences of the proposed action and alternatives considered are fully disclosed in the FEIS/GMP/DCP. Also included are the results of the public involvement and consultation and coordination for this project.

FOR FURTHER INFORMATION CONTACT: Superintendent, Timpanogos Cave National Monument, at the above address and telephone number.

Dated: October 19, 1993.

Michael D. Snyder,

Acting Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 93–29454 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–347]

Certain Anti-Theft Deactivatable Resonant Tags and Components Thereof; Commission Determination To Apply a Modified Procedure for Considering the Presiding Administrative Law Judge's Final Initial Determination and for Deciding Whether There is a Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined, pursuant to rule 201.4(b), to waive in part the interim rules normally applicable to consideration by the Commission of the final initial determination (ID) issued by the presiding administrative law judge (ALJ), and to follow instead a modified procedure for considering the ALJ's final ID in the above-captioned investigation and for deciding whether there is a violation of section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: On or before December 10, 1993, the ALJ will issue a final ID in this investigation. Ordinarily, final IDs are processed in accordance with the deadlines set forth in Commission interim rules 210.53–.56. In this investigation, however, the Commission has determined to waive in part the application of those interim rules and instead to apply a revised procedure. The revised procedure is similar, but not identical, to the procedure set forth in proposed final rule 210.46(a), published in the **Federal Register** on November 5, 1992 (57 FR 52830, 52883). The interim rules are waived for this investigation to the extent that they conflict with the procedure set forth below.

Commission rule 201.4(b) provides for waiver of rules when in the judgment of the Commission there is good and

sufficient reason therefor. The Commission believes these criteria are met here. As noted in the explanatory notes to the proposed final rules (57 FR at 52847), the Commission has proposed an amended and streamlined procedure for review of final IDs. In order to assess the effectiveness of the amended procedure, the Commission has determined to apply a similar procedure in several section 337 investigations, including this one.

Accordingly, consideration of the ALJ's final ID in this investigation will be according to the following procedure:

1. Petitions for review must be filed within 15 days after issuance of the ID.[1]

2. Responses to the petitions for review must be filed within 25 days after issuance of the ID.

3. Reply submissions must be filed within 30 days after issuance of the ID.

4. Approximately 43 days after issuance of the ID, the Commission may issue a notice requesting written submissions from the parties, other federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding by the respondents. The notice also may require the parties to file supplemental briefs on violation issues selected by the Commission. The notice will set deadlines for the submission of any such written submissions or briefs.

5. The Commission will issue an order and a **Federal Register** notice on or before March 10, 1994 (the statutory deadline for completion of the investigation) announcing the Commission's decisions on violation of section 337, and, if necessary, on remedy, the public interest, and bonding.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337, 19 U.S.C. 1335), and § 201.4(b) of the Commission's Rules of Practice and Procedure (19 CFR 201.4(b)). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: November 22, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–29436 Filed 11–30–93; 8:45 am]

BILLING CODE 7020–02–P

[1] Computation of all time periods set forth in this notice shall be in accordance with rule 201.14 (19 CFR § 201.14).

[Investigation No. 731–TA–650 (Final)]

Nitromethane From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–650 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from The People's Republic of China ("China") of nitromethane as provided for in subheading 2904.20.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: James Terpstra (202–205–3199) or Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of nitromethane from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 24, 1993, by ANGUS Chemical Co., Buffalo Grove, IL.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 15, 1994, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 29, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 17, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 22, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony in camera.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is March 22, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 6, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 6, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: November 24, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary

[FR Doc. 93–29437 Filed 11–30–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–361]

Certain Portable On-Car Disc Brake Lathes and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 22, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Pro-Cut International, Inc., HC63, Box 22–H, Lebanon, New Hampshire 03766. A supplemental letter was filed on November 15, 1993. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable on-car disc brake lathes and components thereof, by reason of alleged infringement of U.S. Letters Patent 4,226,146, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on November 23, 1993, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain portable on-car disc brake lathes and components thereof, by reason of alleged infringement of the single claim of U.S. Letters Patent 4,226,146, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Pro-Cut International, Inc., HC63, Box 22–H, Lebanon, New Hampshire 03766.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Ludwig Hunger, Maschinenfabrik GmbH, Alfred Nobel Str. 26, Wuerzburg 97080 Federal Republic of Germany

Hunter Engineering Company, 11250 Hunter Drive, Bridgeton, Missouri 63044

(c) John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401–P, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: November 24, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–29438 Filed 11–30–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–350]

Certain Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives

In the matter of certain sputtered carbon coated computer disks and products containing same, including disk drives; notice of decision not to review initial determinations granting joint motions to terminate the investigation with respect to respondent Toshiba Corp. on the basis of a settlement agreement and with respect to respondent Trace Storage Technology, Inc. on the basis of a license agreement.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (Order No. 68) issued on October 28, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Harry E. Aine ("Aine") and respondent Toshiba Corp. ("Toshiba") to terminate the investigation as to Toshiba on the basis of a settlement agreement. The Commission has also determined not to review an initial determination (Order No. 70) issued on October 28, 1993, by the ALJ granting the joint motion of Aine and respondent Trace Storage Technology, Inc. ("Trace") to terminate the investigation as to Trace on the basis of a licensing agreement.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon coated computer disks and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464.

On September 29, 1993, Aine and Toshiba filed a joint motion to terminate the investigation with respect to Toshiba on the basis of a settlement agreement. On September 28, 1993, Aine and Trace filed a joint motion to terminate the investigation with respect to Trace on the basis of a license agreement. The ALJ issued IDs granting both the Toshiba-Aine and Trace-Aine joint motions and terminating the investigation as to Toshiba and Trace. No petitions for review of either ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: November 22, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–29439 Filed 11–30–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–638 (Final)]

Stainless Steel Wire Rod From India

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from India of stainless steel wire rod, provided for in subheading 7221.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective August 2, 1993, following a preliminary determination by the Department of Commerce that imports of stainless steel wire rod from India were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of August 18, 1993 (58 FR 43908). The hearing was held in Washington, DC, on October 14, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 23, 1993. The views of the Commission are contained in USITC Publication 2704 (November 1993), entitled "Stainless Steel Wire Rod from India: Investigation No. 638 (Final)."

Issued: November 24, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–29440 Filed 11–30–93; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Brunsdale and Commissioner Crawford dissenting.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32377]

Patrick D. Broe—Continuance in Control Exemption Panhandle Northern Railroad Co.

Patrick D. Broe, a noncarrier individual, has filed a notice of exemption to continue in control of Panhandle Northern Railroad Company (PNR) upon PNR becoming a class III railroad carrier.

PNR, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32376, *Panhandle Northern Railroad Company—Acquisition and Operation Exemption—The Atchison, Topeka and Santa Fe Railway Company*, to acquire and operate 31.255 miles of rail line owned by The Atchison, Topeka and Santa Fe Railway Company in the State of Texas. That exemption was expected to be consummated on or after November 12, 1993.

Mr. Broe is a noncarrier individual who will directly control PNR upon its becoming a railroad. Mr. Broe also directly controls The Broe Companies, Inc. (BCI), a holding company that directly controls a rail carrier, Central Kansas Railway, Inc., and noncarriers Great Western Railway Company (Great Western) and Railco, Inc. (Railco). Great Western directly controls rail carriers Great Western Railway of Colorado, Inc., Great Western Railway Company of Iowa, Inc., and Great Western Railway

of Oregon, Inc. Railco controls noncarrier Chicago West Pullman Transportation Company, which in turn controls six class III railroads: The Chicago West Pullman & Southern Railroad Company; the Georgia Woodlands Railroad Company; the Newburgh & South Shore Railroad Company; the Chicago Rail Link; the Manufacturers' Junction Railway Company; and the Kansas Southwestern Railway Company.[1]

PNR indicates that: (1) The rail lines to be acquired and operated will not connect with any of BCI's rail subsidiaries; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any other railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Louis E. Gitomer, Suite 210, 919 18th Street, NW, Washington, DC 20006.

Decided: November 24, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29431 Filed 11–30–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32376]

Panhandle Northern Railroad Company—Acquisition and Operation Exemption—the Atchison, Topeka and Santa Fe Railway Company

Panhandle Northern Railroad Company (PNR), a noncarrier, has filed a notice of exemption to acquire and operate a rail line owned by The Atchison, Topeka and Santa Fe Railway Company (Santa Fe). The line is that portion of Santa Fe's Borger Subdivision between milepost 0.015, at or near Panhandle, TX, and milepost 31.27, near Borger, TX, and extends approximately 31.255-miles. The proposed transaction was expected to be consummated on or after November 12, 1993.

This proceeding is related to Finance Docket No. 32377, Patrick D. Broe—Continuance in Control Exemption—Panhandle Northern Railroad Company, wherein Patrick D. Broe has concurrently filed a notice of exemption to continue in control of PNR when PNR becomes a rail carrier upon consummation of the transaction described in this notice.

Any comments must be filed with the Commission and served on: Louis E. Gitomer, suite 210, 919 18th Street, NW., Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 24, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29430 Filed 11–30–93; 8:45 am]

BILLING CODE 7035–01–P

[1] The existing common control relationship among these carriers is discussed in Finance Docket No. 32362, The Broe Companies, Inc., The Great Western Railway Company, Railco, Inc., and Chicago West Pullman Transportation Corporation, Et Al.—Corporate Family Exemption (not printed), served October 27, 1993.

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Clean Water Act

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that on November 17, 1993 a Consent Decree in *United States* v. *Lucas Western, Inc.*, Civil Action No. A3–92–61, was lodged with the United States District Court for the District of North Dakota.

The United States filed its Complaint in this action on April 27, 1992 under sections 307, 308 and 309 of the Clean Water Act, 33 U.S.C. 1317, 1318 and 1319 seeking civil penalties of up to $25,000 per day of violation at Lucas Western, Inc.'s Jamestown, North Dakota facility. The United States alleges that Lucas Western, Inc. failed to comply with the discharge limits contained in the pretreatment standards at 40 CFR parts 403 and 433, failed to submit timely and complete reports; and failed to take required actions whenever violations of the categorical pretreatment standards were detected, all in violation of sections 307(d) and 308(a) of the Clean Water Act, 33 U.S.C. 1317(d) and 1318(a).

Under the proposed Consent Decree, Lucas Western, Inc. will pay a civil penalty of $250,000.00 in settlement of the United States' claims. Additionally, the Consent Decree requires Lucas Western, Inc. to fully comply with the pretreatment regulations for the duration of the consent decree and to conduct a waste minimization study at its Jamestown facility.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should refer to *United States* v. *Lucas Western, Inc.*, Civ. No. A3–92–61 (D.N.D.)., DOJ Ref. No. 90–5–1–1–3761 and should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division. U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the District of North Dakota, 219 Federal Building and U.S. Courthouse, P.O. Box 2505, Fargo, North Dakota 58108; (2) the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202; and (3) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. Please enclose a check for $6.25 ($0.25 per page reproduction charge) payable to "Consent Decree Library."

Lois J. Schiffer,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–29340 Filed 11–30–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to The Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Phildelphia*, Civil Action No. 92–2957, (E.D. Pa.), was lodged on October 28, 1993 with the United States District Court for the Eastern District of Pennsylvania.

The case arises out of violations of the Clean Water Act committed in the period 1986–1989 when the City discharged wastewater and sewage from three of its prison facilities located in

Philadelphia into Pennypack Creek. The United States' complaint alleges that each such discharge constitutes a violation of the Clean Water Act. The Commonwealth of Pennsylvania intervened as a plaintiff in the case, alleging similar violations of the clean Streams Law.

The above-referenced consent decree resolves the claims of the United States, and the Commonwealth of Pennsylvania under terms requiring payment of a civil penalty of $225,000 (one half to be paid to the United States and one half, to the Commonwealth) and certification by the City that it has taken all corrective measures necessary to prevent further violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Philadelphia*, DOJ Ref. #90–5–1–1–3816.

The proposed consent decree may be examined at the Office of the United States Attorney, suit 1300, 615 Chestnut Street, Philadelphia, PA 19106; the Region III Office of the Environmental Protection Agency, 815 Chestnut Building, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Lois J. Schiffer,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–29339 Filed 11–30–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Rihr and Arizona Board of Regents*, Civil Action No. CIV–92–0957, was lodged on November 2, 1993 with the United States District Court for the District of Arizona. The proposed decree resolves all issues between the United States and the Board of Regents in a civil enforcement action brought pursuant to Section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. 7413(b) and the National Emission Standards for Hazardous Air Pollutants for asbestos ("NESHAP"), promulgated under section 112 of the Act, 42 U.S.C. 7412, and codified at 40 CFR part 61, subpart M. The complaint alleges (1) that the defendants failed to provide written notice of intention to demolish a facility containing structures with asbestos-containing material ("ACM") owned by the University of Arizona (in violation of 40 CFR 61.146 and sections 112(c) and 114(b)(1)(B)), (2) that they conducted demolition activities at the facility without removing the friable ACM prior to any wrecking or dismantling activities being initiated or failed to properly encase or wet the material during the subject demolition activity in violation of 40 CFR 61.147(a) and section 112(c), and (3) that they failed to deposit all ACM from the subject demolition project in an deposit all ACM from the subject demolition project in an approved waste disposal site (operated in accordance with 40 CFR 60.152(a) and section 112(c) of the Act). Under the terms of the decree, the Board will pay a penalty of $15,000 and agree to comply in the future with the provisions of the Act and in particular, specific guidelines of the University for handling asbestos removal.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Rihr and Arizona Board of Regents*, DOJ Ref. #90–5–2–1–1447. The proposed consent decree may be examined at the office of the United States Attorney, 4000 United States Courthouse, 230 North First Avenue, Phoenix, Arizona 85025; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–29338 Filed 11–30–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Employment and Training Assistance for Dislocated Workers; Reallotment of Title III Funds

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information the Job Training Partnership Act Title III (Employment and Training Assistance for Dislocated Workers) funds identified by States for reallotment, and the amount to be reallotted to eligible States.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Worker Retraining and Adjustment Programs, Employment and Training Administration, Department of Labor, room N–5426, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–219–5577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to Title III of the Job Training Partnership Act (JTPA of the Act), as amended by the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), the Secretary of Labor (Secretary) is required to recapture funds from States identified pursuant to section 303(b) of the Act, and reallot such funds by a Notice of Obligation (NOO) adjustment to current year funds to "eligible States" and "eligible high unemployment States", as set forth in section 303(a), (b), and (c) of JTPA. 29 U.S.C. 1653. The basic reallotment process was described in Training and Employment Guidance Letter No. 4–88, dated November 25, 1988, Subject: Reallotment and Reallocation of Funds under title III of the Job Training Partnership Act (JTPA), as amended, 53 FR 43737 (December 2, 1988). The reallotment process for Program Year (PY) 1993 funds was described in Training and Employment Guidance Letter No. 3–92, dated February 2, 1993, Subject: Reallotment of Job Training Partnership Act (JTPA) Title III Formula-Allotted Funds.

NOO adjustment to the PY 1993 (July 1, 1993-June 30, 1994) formula allotments are being issued based on expenditures reported to the Secretary by the States, as required by the recapture and reallotment provisions at Sections 303 of JTPA. 29 U.S.C. 1653.

The funds recaptured are an amount equal to the sum of every State's unexpended PY 1992 formula funds in excess of 20 percent of its PY 1992 formula allotments, and all unexpended funds made available by formula for PY 1991. A State's PY 1992 formula allotments include the initial allotment for PY 1992, and any additional funds received by the State during the PY 1992 reallotment process. Funds are recaptured from PY 1993 formula allotments, and are distributed by formula to eligible States and eligible high unemployment States, resulting in either an upward or downward adjustment to every State's PY 1993 allotment.

Unemployment Data

The unemployment data used in the formula for reallotment, relative numbers of unemployed and relative numbers of excess unemployed, were for the July 1992 through June 1993 period. Long-term unemployment data used were for calendar year 1992. The determination of "eligible high unemployment States" for the reallotment of excess unexpended funds was also based on unemployment data for the period July 1992 through June 1993, with all average unemployment rates rounded to the nearest tenth of one percent. The unemployment data were provided by the Bureau of Labor Statistics, based upon the Current Population Survey.

The table below displays the distribution of the net changes to PY 1993 formula allotments.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
PY 1993 JTPA Title III Reallotment to States
November 9, 1993

	COL 1	COL 2	COL 3	COL 4	COL 5	COL 6
Alabama	7.3	0	34,846	0	15,229	15,229
Alaska	8.5	55,655	0	0	0	−55,655
Arizona	7.1	11,431	31,094	0	13,590	2,159
Arkansas	6.8	0	18,737	0	8,189	8,189
California	9.4	0	429,270	429,270	187,612	616,882
Colorado	5.8	0	20,580	0	8,994	8,994
Connecticut	7.3	0	41,455	0	18,118	18,118
Delaware	4.9	0	3,731	0	1,631	1,631
District of Columbia	8.7	72,504	0	0	0	−72,504
Florida	7.5	295,289	139,241	139,241	60,855	−95,193
Georgia	6.6	0	55,870	0	24,418	24,418
Hawaii	4.8	0	4,400	0	1,923	1,923
Idaho	6.5	0	7,251	0	3,169	3,169
Illinois	7.4	0	124,399	124,399	54,368	178,767
Indiana	6.2	0	39,052	0	17,068	17,068
Iowa	4.3	0	10,215	0	4,464	4,464
Kansas	4.6	0	8,867	0	3,875	3,875
Kentucky	6.7	1,294,591	0	0	0	−1,294,591
Louisiana	7.7	0	38,947	38,947	17,022	55,969
Maine	7.5	0	13,842	13,842	6,050	19,892
Maryland	6.4	0	44,076	0	19,263	19,263
Massachusetts	7.7	0	79,912	79,912	34,926	114,838
Michigan	7.7	0	99,178	99,178	43,346	142,524
Minnesota	5.2	0	25,434	0	11,116	11,116
Mississippi	7.3	172,646	0	0	0	−172,646
Missouri	6.0	0	36,557	0	15,977	15,977
Montana	6.5	0	6,298	0	2,752	2,752
Nebraska	2.9	0	3,434	0	1,501	1,501
Nevada	6.8	0	11,405	0	4,984	4,984
New Hampshire	7.5	0	13,799	13,799	6,031	19,830
New Jersey	8.3	233,107	0	0	0	−233,107
New Mexico	6.8	0	11,596	0	5,068	5,068
New York	8.2	0	222,443	222,443	97,219	319,662
North Carolina	5.6	21,858	42,442	0	18,549	−3,309
North Dakota	4.7	0	2,497	0	1,091	1,091
Ohio	6.9	0	99,848	0	43,638	43,638
Oklahoma	5.7	0	19,206	0	8,394	8,394
Oregon	7.4	0	28,700	28,700	12,544	41,244
Pennsylvania	7.3	2,124	121,720	0	53,198	51,074
Puerto Rico	16.8	69,958	0	0	0	−69,958
Rhode Island	8.3	0	14,370	14,370	6,280	20,650
South Carolina	6.3	0	26,479	0	11,572	11,572
South Dakota	3.2	0	1,517	0	663	663
Tennessee	6.2	0	33,373	0	14,586	14,586
Texas	7.3	0	157,296	0	68,746	68,746
Utah	4.6	0	5,992	0	2,619	2,619
Vermont	6.4	0	5,312	0	2,322	2,322
Virginia	5.7	0	44,885	0	19,617	19,617
Washington	7.7	0	52,620	52,620	22,998	75,618
West Virginia	11.2	0	29,492	29,492	12,889	42,381
Wisconsin	4.9	0	23,090	0	10,091	10,091
Wyoming	5.4	55,605	0	0	0	−55,605
NATIONAL TOTAL	7.3	2,284,768	2,284,768	1,286,213	998,555	0

BILLING CODE 4510-30-C

Explanation of Table

Column 1: This column shows each State's unemployment rate for the twelve months ending June 1993.

Column 2: This column shows the amount of excess funds (unexpended PY 1992 funds in excess of 20 percent of the State's PY 1992 formula allotments as described above and/or unexpended PY 1991 formula-allotted funds), which are subject to reallotment. PY 1993 funds in an amount equal to the excess funds identified will be recaptured from such States and distributed as discussed below.

Column 3: This column shows total excess funds distributed among all "eligible States" by applying the regular Title III formula. "Eligible States" are those with unexpended PY 1992 funds at or below the level of 20 percent of their PY 1992 formula allotments as described above.

Column 4: Eligible States with unemployment rates higher than the national average, which was 7.3 percent for the 12-month period, are "eligible high unemployment States." These eligible high unemployment States received amounts equal to their share of the excess funds (the amounts shown in column 3) according to the regular Title III formula. This is Step 1 of the reallotment process. These amounts are shown in column 4 and total $1,286,213.

Column 5: The sum of the remaining shares of available funds ($998,555) for eligible States with unemployment rates less than or equal to the national average is distributed among all eligible States, again using the regular Title III allotment formula. This is Step 2 of the reallotment process. These amounts are shown in column 5.

Column 6: Net changes in PY 1993 formula allotment are presented. This column represents the decreases in Title III funds shown in column 2, and the increases in Title III funds shown in columns 4 and 5. NOOs in the amounts shown in column 6 are being issued to the States listed.

Equitable Procedures

Pursuant to section 303(d) of the Act, Governors of States required to make funds available for reallotment shall prescribe equitable procedures for making funds available from the State and substate grantees. 29 U.S.C. 1653(d).

Distribution of Funds

Funds are being reallotted by the Secretary in accordance with section 303(a), (b), and (c) of the Act, using the factors described in section 302(b) of the Act. 29 U.S.C. 1652(b) and 1653(a), (b), and (c). Distribution within States of funds allotted to States shall be in accordance with section 302(c) and (d) of the Act (29 U.S.C. 1652(c) and (d)), and the JTPA regulation of 20 CFR 631.12(d).

Signed at Washington, DC, this 23rd day of November, 1993.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 93–29386 Filed 11–30–93; 8:45 am]

BILLING CODE 4510–30–M

Office of the Secretary

Labor Organization and Auxiliary Reports

AGENCY: Office of the Secretary, Labor.

ACTION: Request for expedited review under the Paperwork Reduction Act.

SUMMARY: The Office of the American Workplace's Office of Labor-Management Standards (OLMS), in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), is submitting a request for approval to the Office of Management and Budget for an information collection involving Labor Organization Annual Financial Reports. OLMS has requested an expedited review of this submission to be completed by December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the information collection should be directed to Kay Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Office of American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–5605, Washington, DC 20210, (202) 219–7373. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OAW/OLMS, Office of Management and Budget, room 3001, Washington, DC 20503, (202) 395–7316.

The notice of proposed rulemaking (NPRM) which contained the proposed revisions to labor organization annual financial reports was published in the **Federal Register** on September 23, 1993. This NPRM contained a summary of OLMS' proposed revisions, copies of the proposed revised forms (LM–2, LM–3, and LM–4), and the proposed instructions. The NPRM was published with a 30-day comment period providing the public with ample opportunity to comment on the proposed revisions. This expedited review is being submitted to provide OMB with additional information on the public comments submitted in response to the NPRM and on the Department's response to those comments for inclusion in the OMB docket file. Specifically, information being provided to OMB pertains to the Department's decision to (1) delete the option to report on either the cash or accrual basis of accounting and reinstate the requirement to report on the cash basis, (2) add a question pertaining to the number of dues paying members, (3) add a question pertaining to whether any officer of the reporting organization had a paid position with another labor organization or an employee benefit plan, (4) add a question pertaining to whether an outside audit of the reporting labor organization's books and records had been conducted, and (5) add a question pertaining to whether the reporting labor organization has a political action committee (PAC).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Kay Oshel of this intent at the earliest possible date.

	LM–2	LM–3	LM–4
Frequency of Response	Annual	Annual	Annual
Number of Respondents	5,096	16,275	14,000
Average House per Response	15.25 hrs	6.75 hrs	52 mins
Annual Burden Hours	77,714	109,857	12,086

Affected Public: Labor Unions
Respondents' Obligation to Reply: Required by Federal statute

Signed at Washington, DC, this 29th day of November, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–29546 Filed 11–30–93; 8:45 am]

BILLING CODE 4510–86–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–089]

Invention Available for Licensing.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability for licensing.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

U.S. Patent Application Number 08/134,444, filed October 12, 1993, and entitled "Flux-Focusing Eddy Current Probe and Method for Flaw Detection"—The present invention is a flux-focusing electromagnetic sensor which uses a ferromagnetic flux-focusing lens simplifies inspections and increases detectability of fatigue cracks and material loss in high conductivity material. The unique feature of the device is the ferrous shield isolating a high-turn pick-up coil from an excitation coil. The use of the magnetic shield is shown to produce a null voltage output across the receiving coil in the presence of an unflawed sample. A redistribution of the current flow in the sample caused by the presence of flaws, however, eliminates the shielding condition and a large output voltage is produced, yielding a clear unambiguous flaw signal.

The maximum sensor output is obtained when positioned symmetrically above the crack. Hence, by obtaining the position of the maximum sensor output, it is possible to track the fault and locate the area surrounding its tip using an algorithm similar to the grid-search chi-square minimization scheme. The precise position of the crack tip can then be found using a simple numerical process. The accuracy of tip location is enhanced by two unique features of the sensor; a very high signal-to-noise ratio of the probe's output which results in an extremely smooth signal peak across the fault, and a rapidly decaying sensor output outside a small area surrounding the crack tip which enables the region for searching to be clearly defined.

Under low frequency operation, material thinning due to corrosion damage causes an incomplete shielding of the pick-up coil. The low frequency output voltage of the probe is therefore a direct indicator of the thickness of the test sample. A swept frequency measurement performed on manufactured thickness calibration standards was able to clearly delineate all samples tested, showing a resolution of less than 0.5% of the sample thickness. In addition, simulated inter-layer corrosion in a lap-joint sample has been detected using a single frequency mode of operation. The results clearly identified all material loss from the back surface of the panel.

The invention claimed in this patent application is available for licensing on an exclusive, partially exclusive or nonexclusive basis for upfront, running and annual minimum royalty payments to a partner committed to commercializing this technology.

ADDRESSES: Licensing information and a copy of the U.S. Patent Application (without the claims) may be obtained by writing to Kimberly A. Chasteen at the Office of Patent Counsel, Mail Stop 143, NASA Langley Research Center, Hampton, VA 23681–0001 telephone (804) 864–3227, fax (804) 864–8298. Please note the case number, LAR–15,046–1, when requesting information.

Dated: November 16, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–29443 Filed 11–30–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–090]

Invention Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability for licensing.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

U.S. Patent Application Number 08/126,286, filed September 23, 1993, and entitled "Deployable Reflector Structure"—The present invention relates in general to large reflector structures for deployment in outer space.

A deployable reflector structure according to the invention comprises a number of movable reflector panels pivotably supported on rigid arms. Several such arms are pivotably connected to a central structure, so the arms can move in starburst fashion from a packaged stage, where all arms are vertical, to a deployed stage, where all of the arms are horizontal. All of the movable reflector panels are maintained at a predetermined angle to an axis of the reflector structure when the arms are pivoted, so the reflector panels are stacked tightly on top of each other in the packaged stage. Simple mechanisms are provided for avoiding interference between panels on different arms in the packaged stage, and for fitting the movable panels together like tiles in the deployed stage.

The movable arms act as a stabilizing sub-structure for the reflecting panels in a deployable reflector structure according to the invention, so a highly accurate reflecting surface is assured. The invention also provides very compact packaging of the reflector structure in its packaged stage. A reflecting structure of 20 meter deployed diameter will fit in the cargo bay of the U.S. Space Shuttle.

The invention claimed in this patent application is available for licensing on an exclusive, partially exclusive or nonexclusive basis for upfront, running and annual minimum royalty payments to a partner committed to commercializing this technology.

ADDRESSES: Licensing information and a copy of the U.S. Patent Application (without the claims) may be obtained by writing to Kimberly A. Chasteen at the Office of Patent Counsel, Mail Stop 143, NASA Langley Research Center, Hampton, VA 23681–0001 telephone (804) 864–3227, fax (804) 864–8298. Please note the case number, LAR–14,513–1, when requesting information.

Dated: November 16, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–29444 Filed 11–30–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–091]

Invention Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability for licensing.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with

35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

U.S. Patent Application Number 08/095,563, filed July 19, 1993, and entitled "Shock-Free Supersonic Elliptic Nozzles and Method of Forming Same"—The present invention relates in general to jet nozzles and specifically to supersonic elliptic jet nozzles.

According to the design procedure, the nozzle to be designed is divided into three sections, as shown in Figures 1(a) and 1 (b), a circular-to-elliptic section 3 which begins at a circular nozzle inlet, an elliptic subsonic section 2 downstream from the circular-to-elliptic section and a supersonic section 3 downstream from the elliptic subsonic section. The maximum and minimum radii are determined for each axial point in the circular-to-elliptic section, the maximum and minimum radii being the radii for the widest part of an elliptic cross section and the narrowest part of the elliptic cross section, respectively. The maximum and minimum radii are determined for each axial point in the elliptic subsonic section. The maximum and minimum radii are determined for each axial point in the supersonic section based on the Method of Characteristics. The shape of each of the three sections is determined separately based on the maximum and minimum radii for each axial point in the respective section. The resulting elliptic jet nozzle is also claimed.

The supersonic elliptic nozzle formed according to the above method minimizes shock noise and exhibits smooth pressure contours within the nozzle.

The invention claimed in this patent application is available for licensing on an exclusive, partially exclusive or nonexclusive basis for upfront, running and annual minimum royalty payments to a partner committed to commercializing this technology.

ADDRESSES: Licensing information and a copy of the U.S. Patent Application (without the claims) may be obtained by writing to Kimberly A. Chasteen at the Office of Patent Counsel, Mail Stop 143, NASA Langley Research Center, Hampton, VA 23681–0001, telephone (804) 864–3227, fax (804) 864–8298. Please note the case number, LAR–14,054–1, when requesting information.

Dated: November 16, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–29445 Filed 11–30–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–092]

Invention Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability for licensing.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

U.S. Patent Application Number 08/138,046, filed October 12, 1993, and entitled "Method for Making a Dynamic Pressure Sensor and a Pressure Sensor Made According to the Method"—The present invention relates in general to measurement of pressure fluctuations in a high speed boundary layer along a test surface, and specifically to a method for making a pressure sensor with a stretched cup-shaped membrane as a sensing element fit perfectly flush with a test surface.

According to the invention, a soft metal is deposited on the membrane and surrounding areas of a pressure sensor. A pressure sensor with a stretched cup-shaped membrane as the sensing element is illustrated in Figs. 2 and 3. The side wall of the tip of the pressure sensor and the lateral part of the deposited metal is removed from the top of the membrane in small steps, by machining or lapping while the pressure sensor is mounted in a jig or the wall of a test object, until the true top surface of the membrane appears. Fig. 3 illustrates how the top of the membrane is stretched. A thin indicator layer having a color contrasting with the color of the membrane may be applied to the top of the membrane before metal is deposited to facilitate the determination of when to stop metal removal from the top surface of the membrane.

A pressure sensor made according to the above method has a flat membrane area with a sharp, square edge. A surface finish of typically 10 microrinches rms can be achieved on the installed pressure sensor.

The invention claimed in this patent application is available for licensing on an exclusive, partially exclusive or nonexclusive basis for upfront, running and annual minimum royalty payments to a partner committed to commercializing this technology.

ADDRESSES: Licensing information and a copy of the U.S. Patent Application (without the claims) may be obtained by writing to George F. Helfrich at the Office of Patent Counsel, Mail Stop 143, NASA Langley Research Center, Hampton, VA 23681–0001 telephone (804) 864–3521, fax (804) 864–8298. Please note the case number, LAR–14,029–1, when requesting information.

Dated: November 16, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–29446 Filed 11–30–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–088]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: December 15, 1993, 8 a.m. to 5 p.m.; and December 16, 1993, 8 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Reid Conference Center, Langley Room, 14 Langley Boulevard, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546 (202/554–0501).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Research and Technology Panel Reviews
—High Performance Computing and Communications
—Wind Tunnel Update
—NASA Efforts to Acquire Russian Developed Technology
—Joint NASA/Federal Aviation Administration Activities
—New AAC Studies
—Aeronautics Strategic Planning

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: November 18, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 93–29442 Filed 11–30–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation is required to publish notice of applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Act at title 45, part 670, Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 22, 1993. Permit applications may be inspected at the Permit Office, address below.

ADDRESSES: Comments be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Guy G. Guthridge at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Anarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations also designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

Dr. E. Imre Friedmann, Department of Biological Science and Polar Desert Research Center, Florida State University, 320 Conradi Building, Tallahassee, FL 32306–2043.

2. Activity for Which Permit Requested

Enter Site of Special Scientific Interest. Import Into USA.

Rock samples containing living and/or fossil mircobial colonization will be collected to study extinction and/or damage due to environmental factors. This is part of a major survey extending to the entire McMurdo Dry Valleys area. Hand specimens of rocks will be collected from the ground or removed, if necessary, by geological hammer. As many as 25 samples will be collected; the samples will not weigh more than 3 pounds each. Some of the samples will be collected in Linnaeus Terrace, a Site of Special Scientific Interest (SSSI). Entry, camping, and sample collection will be in accordance with the Management Plan for the SSSI, which was established specifically to protect microbial research of the type proposed in this application. Specimens will be examined and stored frozen in the Antarctic Core Library of Florida State University.

3. Location

Linnaeus Terrace Site of Special Scientific Interest

4. Dates

Several days between 12–26–93 and 01–20–94

Guy G. Guthridge,

Acting Permit Officer, Office of Polar Programs.

[FR Doc. 93–29387 Filed 11–30–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences.

Date and time: Thursday, December 16, 1993; 8:30 a.m. to 5 p.m., Friday, December 17, 1993; 8:30 a.m. to 3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of meeting: Closed.

Contact person: Gerald Selzer, Program Director, Special Projects Program, NSF, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1469.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for support.

Agenda: To provide and evaluate preproposals for BIO Research Training Groups as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 26, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–29379 Filed 11–30–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 59th meeting on Monday, December 13, 1993, in the Monte Carlo Room, the St. Tropez All Suite Hotel, 455 East Harmon Avenue, Las Vegas, Nevada.

The entire meeting will be open to public attendance.

9 a.m.–10 a.m.: Activities at the Proposed Yucca Mountain High-Level Waste Repository (Open)—The Committee will be briefed by and hold discussions with representatives of DOE management on current activities at the proposal HLW repository at Yucca Mountain. Representatives of the NRC staff will participate, as appropriate.

10:15 a.m.–12 noon: Yucca Mountain Project—Technical Issues (Open)—The Committee will be briefed by and hold discussions with DOE and M&O representatives on selected technical areas, e.g., surface-based testing, ESF status and design, and the status of resolution of selected issues.

1 p.m.–3:30 p.m.: Yucca Mountain Project—Interested Party Comments (Open)—The Committee will hear comments from and hold discussions with state, county, and local government officials. Representatives from Indian tribes and others interested in the proposed HLW repository may also present comments.

3:45 p.m.–6 p.m.: Committee activities/ Future Activities—The Committee will elect Chairman and Vice-Chairman for calendar year 1994. The Committee will also discuss topics proposed for consideration during future meetings.

6 p.m.–6:30 p.m.: (tentative): MIscellaneous—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meetings that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the

office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determining by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: November 24, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–29428 Filed 11–30–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 60th meeting on Monday, December 20, 1993, in room P–422, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance.

Monday, December 20, 1993—3 p.m. until 6 p.m.:

The Committee will prepare for its discussion with NRC Commissioners and discuss anticipated and proposed Committee activities, future meeting dates and agenda, and administrative matters, as appropriate.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: November 24, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–29427 Filed 11–30–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Co.; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–11 and NPF–18 issued to Commonwealth Edison Company (the licensee) for operation of the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

The proposed amendments would approve a revision to the LaSalle County Station, Units 1 and 2, Updated Final Safety Analysis Report (UFSAR), section 11.5.2.1.4, which specifies that currently, operator action is required to trip the mechanical vacuum pump upon receipt of a main steam line high radiation alarm rather than the automatic trip currently described in the UFSAR. NRC approval is required because this existing condition, contrary to that described in the UFSAR and the NRC's Safety Evaluation Report (SER) related to the operation of LaSalle County Station (NUREG–0519), involves an unreviewed safety question.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The lack of an automatic trip and isolation of the LaSalle Unit 1 and 2 mechanical vacuum pumps does not change the accident initiators for a design basis control rod drop accident or the inventory of fuel fission products available for release during this accident. Therefore, the probability of the design basis control rod drop accident is not changed.

The lack of an automatic trip and isolation of the LaSalle Unit 1 and 2 mechanical vacuum pumps does not significantly increase the consequences of the design basis control rod drop accident provided that the mechanical vacuum pump is tripped within 15 minutes of receiving the main steam high radiation trip alarms. Fifteen minutes for this operator action is reasonable time to respond to alarms based on licensed operator training, including simulator training. The trip is accomplished with a hand switch located on the Main Control Room front panels. A Human Factors Task Analysis has been performed by Commonwealth Edison and found acceptable assessing the actions to be performed by the control room operator. Also, the time that the mechanical vacuum pump operates during reactor startup, approximately 8 hours, does not affect the probability of the design basis control rod drop accident.

UFSAR (Updated Final Safety Analysis Report) section 15.4.9 states that a rod drop does not exceed the 280 cal/gm design limit and failure of fuel cannot result naturally from a control rod drop accident. This determination was based on the following input parameters and initial conditions:

At the time of the control rod drop accident the core is assumed to be at a cycle point which results in the highest control rod worth. The core is also assumed to contain no xenon, to be in a hot-startup condition, and to have the control rods in sequence at a 50% rod density. The assumption to remove xenon, which competes well for neutron absorptions, increases the fractional absorptions, or worth of the control rods. The 50% control rod density assumption, ("black and white" rod pattern), which nominally occurs at the hot-startup condition, ensures that withdrawal on the next rod results in the maximum increment of reactivity.

The control rod drop accident analysis is performed as described in:

General Electric (GE) document NEDE–24011–P–A–10–US, "General Electric Standard Application for Reactor Fuel (GESTAR–II), Supplement for United States, dated March 1991.

If the worth of any control rod is determined to be greater than 1% $\Delta k/k$, a cycle specific control rod drop analysis is performed in accordance with:

Commonwealth Edison Co. Nuclear Fuel Services Report, NFSR–0075, Rev. O, "Control Rod Sequence Simplification," December, 1989.

The analysis for each unit's current cycle performed per NFSR–0075 verifies that heat

generated during a control rod drop accident is less than the 280 cal/gm design limit.

The assumptions of the Control Rod Drop Accident (CRDA) analysis are conservative with respect to the realistic or actual values or practice. A comparison of the conservative assumptions versus the more realistic case are as follows (even though not taken credit for in either the original or new analyses that have been performed):

a. GE uses 10 rod groups for the analysis, LaSalle Subdivides these into 12 groups. The smaller groups reduce radical peaking and incremental rod worths, resulting in lower fuel enthalpies.

b. GE uses an adibatic model to calculate the peak fuel enthalpy, Brookhaven National Laboratory (BNL) has analyzed for the NRC the CRDA using appropriate thermal-hydraulic feedback. BNL results show the peak fuel enthalpy well below the 150 cal/gm for a 1.5% Δk rod worth compared to GE's analysis of 280 cal/gm for a 1.42% Δk rod worth.

Based on the above, there is not a significant increase in the probability or consequences of the design basis control rod drop accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

This change specifically affects the design basis control rod drop accident, and is the only low power event that involves release of fission products to the main condenser. The only difference between the accepted analysis and the new analysis is the rate of release from the main condenser and a ground level release (original analysis) versus an elevated (from the station vent stack) release, for the new analysis. Therefore, the change does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety because:

The margin of safety that is affected by this change involves the radiological consequences of the design basis control rod drop accident. This margin of safety is based on the Standard Review Plan, section 15.4.9, which states that the calculated whole-body and thyroid doses at the exclusion area boundaries (EAB) and at the low population zone (LPZ) boundaries are well within the exposure guideline values in 10 CFR part 100, section 11, if the doses are less than 25% of the 10 CFR Part 100 exposure guideline values or 75 rem for the thyroid and 6 rem for whole-body doses. If the mechanical vacuum pump is manually tripped in less than or equal to 15 minutes after the receipt of the main steam line high radiation trip alarm, the analysis shows that the radiological consequences of the design basis control rod drop accident are less than 25% of the 10 CFR part 100 exposure guideline values.

Guidance has been provided in "Final Procedures and Standards on No Significant Hazards Considerations," Final Rule, 51 FR 7744, for the application of standards to license change requests for determination of the existence of significant hazards considerations. This document provides examples of amendments which are and are not considered likely to involve significant hazards considerations. These proposed amendments most closely fit the example of a change which may [either result in some increase to the probability or consequences of a previously] analyzed accident or may reduce in some way a safety margin, but where the results are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan section 15.4.9.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 3, 1994, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348. If a request for a hearing or petition for leave to intervene in filled by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene

which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involved no significant hazards consideration, the commission may issue the amendments and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to James E. Dyer: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated September 10, 1993 as supplemented on November 17, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public comment room located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 23rd day of November 1993.

For the Nuclear Regulatory Commission.

Anthony T. Gody, Jr.,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–29429 Filed 11–30–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co., Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would revise Technical Specification Section 3/4.5.1, "ECCS Subsystems—Tavg Greater Than or Equal to 350° F," by adding a new ACTION Statement "A" for the centrifugal charging pumps which would increase the allowed outage time from 72 hours to 7 days. In addition, the ACTION statements would need to be relettered to reflect the addition of the new ACTION statement for the centrifugal charging pumps.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 3, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and the extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible

effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in this matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 2, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russel Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 23rd day of November 1993.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 93–29432 Filed 11–30–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8027–EA; ASLBP No. 94–684–01–EA]

Sequoyah Fuels Corp., General Atomics, Gore, OK; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Sequoyah Fuels Corporation, General Atomics (Gore, Oklahoma, Site Decontamination and Decommissioning Funding);

Source Material License No. SUB–1010

This Board is being established pursuant to the requests by Sequoyah Fuels Corp., the Licensee, and General Atomics, its parent corporation, for a hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support dated October 15, 1993 (58 FR 55087, October 25, 1993). The order imposed supplemental conditions found necessary to fully satisfy the Commission's financial assurance requirements for decommissioning facilities pursuant to 10 CFR part 40.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Judge James P. Gleason, Board Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Judge Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 22nd day of November, 1993.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 93–29433 Filed 11–30–93; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Refunds of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of time limitations on requests for premium refunds paid for non-covered plans.

SUMMARY: This notice calls attention to the statute of limitations on claims against the Pension Benefit Guaranty Corporation ("PBGC") for refunds of premiums paid for pension plans not covered by title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"). The PBGC will review untimely claims for refunds of premiums paid for non-covered plans that are received by the PBGC by February 15, 1994, and the PBGC may, depending on the facts and circumstances of particular cases, exercise its discretion to pay some portion of the amounts so claimed notwithstanding the statutory time limitation. Claims received after that date will not receive such consideration.

DATES: Requests for consideration of refund claims for which the statutory limitations period has expired must be received by the Pension Benefit Guaranty Corporation by February 15, 1994, to be eligible for consideration under this notice.

ADDRESSES: Address requests for consideration of refund claims for which the statutory limitations period has expired to Joseph DeFranco, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026 (before December 6, 1993, use 2020 K Street, NW., Washington, DC 20006–1860).

FOR FURTHER INFORMATION CONTACT: Joseph DeFranco, Attorney, at the above address, 202–778–8823 (as of December 20, 1993, use 202–326–4026) (202–778–1958 for TTY and TDD (as of January 24, 1993, use 202–326–4179)). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Pension plans described in section 4021 of ERISA are covered by the pension insurance system administered by the PBGC under title IV of ERISA, and premiums must be paid to the PBGC under ERISA section 4007 for such plans. Most defined benefit pension plans are covered by title IV, but there are a number of exceptions. For example, church plans (as defined in section 414(e) of the Internal Revenue Code) are excluded from title IV coverage under section 4021(b)(3) of ERISA unless an election described in section 4021(b)(3) is made.

PBGC premiums are not owed for a plan that is not covered by title IV, and a non-covered plan does not become a covered plan merely because PBGC premiums are paid for it. In general, premiums paid for a non-covered plan may be recovered by requesting a refund. However, ERISA section 4003(f)(5) imposes a time limitation on claims against the PBGC: In general, the PBGC need not pay any claim for which enforcement is sought more than six years from the date when the claim arose. A claim for refund of an erroneous premium payment is generally considered to arise on the date when the erroneous payment is made.

The PBGC generally refuses payment of claims that are not timely presented under the statute. However, the circumstances of some recent requests for refunds of premiums paid for plans for years when they were not covered by title IV have made the PBGC aware that some persons may believe that the statutory time limitation on claims against the PBGC does not apply to non-covered plans' refund claims.

The PBGC hereby notifies the public that it will review untimely claims for refunds of premiums paid for non-covered plans, if received by the PBGC by February 15, 1994, and that it may, depending on the facts and circumstances of particular cases, exercise it discretion to pay some portion of the amounts so claimed notwithstanding the statutory time limitation. Claims received after that date will not receive such consideration. For this purpose, the PBGC will consider a refund claim to be received when it receives a written communication that clearly identifies the plan in question and that (1) requests a refund, (2) requests a title IV coverage determination, or (3) notifies the PBGC that a request has been submitted to the Internal Revenue Service for a ruling or determination that would be a basis for a request to the PBGC for a title IV coverage determination.

Issued at Washington, DC, this 24th day of November 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–29367 Filed 11–30–93; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33241; File No. SR–CHX–93–29]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Chicago Stock Exchange, Inc. Relating to Extended Trading Hours for the Chicago Stock Basket

November 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX submits the following rule proposal which extends the hours of trading of the Chicago Stock Basket ("CXM") pursuant to the provisions of Article XXXVI.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to make the trading hours of the CXM consistent with the trading hours of the corresponding derivative products that

[1] Specifically, the CHX proposes to amend Article IX, Rule 10 to extend the hours of trading in the CXM until 3:15 Central time (4:15 Eastern time). The CHX's primary trading session currently ends at 3 Central time (4 Eastern time).

are based on the same index as the CXM,[2] and other derivative products that might be used as a hedge against the CXM.[3] Similar trading hours with other derivative products will provide certain risk management benefits when trading the CXM.

2. Statutory Basis

The proposed rule change in consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Withing 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–93–29 and should be submitted by December 22, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[2] The Commission notes that the CXM is a standardized basket product consisting of twenty-five shares of each of the stocks included in the Chicago Mercantile Exchange's "MMI" futures contract. The contract is based on the American Stock Exchange's Major Market Index ("MMI"), a broad-based price-weighted index of twenty stocks listed on the New York Stock Exchange. See Securities Exchange Act Release No. 33053 (October 15, 1993), 58 FR 54610 (October 22, 1993) (File No. SR–CHX–93–18).

[3] The CHX offered examples of potential hedging strategies involving the CXM that could use, among other things, derivative products based on the Standard & Poor's 100 and Standard & Poor's 500 indexes. Telephone conversation between David T. Rusoff, Foley & Lardner, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on November 15, 1993.

[Release No. 34–33238; File No. SR–GSCC–93–4]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Order Approving a Proposed Rule Change Relating to GSCC's Clearing Fund Formula

November 22, 1993.

On April 21, 1993, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–93–4) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposal seeks Commission approval of GSCC's current clearing fund formula.[2] Notice of the proposal appeared in the **Federal Register** on June 7, 1993.[3] GSCC filed a technical amendment on June 11, 1993.[4] No public comments were received. For the reasons discussed below, the Commission is approving GSCC's use of the current clearing fund formula on a permanent basis.

I. Description

Generally, GSCC's clearing fund formula calculates the amount a member must contribute to the fund to collateralize the risk its daily settlement activities pose for GSCC.[5] A participant's required clearing fund deposit is the sum of two components: Funds-only settlement obligations and securities net settlement obligations. The funds-only settlement obligations component, which is designed to collaterize a member's net cash payment obligations to GSCC, is equal to 125% of the summed absolute values of the netting member's average[6] funds only settlement obligation for the previous twenty days.[7]

The securities net settlement obligations component, which is designed to collateralize GSCC's guarantee of a member's securities deliver and receive obligations, is the greater of either the average offset margin amount[8] for the last twenty business days or 50% of the gross margin amount.[9] The gross margin

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission granted temporary approval of GSCC's current clearing fund formula by two separate orders. Securities Exchange Act Release Nos. 27901 (April 12, 1990), 55 FR 15055 ("Release No. 27902"). The Commission subsequently granted further temporary approval of the formula until June 30, 1993. Securities Exchange Act Release Nos. 32090 (April 1, 1993), 58 FR 18289.

[3] Securities Exchange Act Release No. 32001 (May 28, 1993), 58 FR 31983.

[4] Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Richard C. Strasser, Attorney, Division of Market Regulation ("Division"), Commission (June 11, 1993).

[5] For a detailed description of the clearing fund formula, see Release Nos. 27901 and 27902, *supra* note 2.

[6] The average is a weighted rolling average (i.e., GSCC places greater weight on more recent days within the 20 business days). Release No. 27902, *supra* note 2 at n.35.

[7] The funds only settlement amount is determined by calculating for a particular business day the net total of the following: (1) Trade adjustments for settling positions; (2) any marks-to-the-market owed for failed positions; (3) adjustments for coupon and redemption payments; (4) the amount reported to a member during the previous business day's processing cycle as its funds-only settlement amount obligations ("opening balance"); (5) the aggregate settlement amount that a member has received from or paid to GSCC since the end of the processing cycle immediately preceding the processing cycle for which the funds-only settlement amount is being calculated ("collection/paid amount"); (6) the total required forward mark allocation payment; and (7) the total forward mark allocation return amount. Release No. 27902.

[8] The offset margin amount is calculated by subtracting a credit for offsetting net settlement positions from the gross margin amount of a member's net settlement positions. Release No. 27901, *supra* note 2.

[9] Price movements of certain securities exhibit close although not perfect correlation. GSCC gives clearing members an offset credit for positions which historically have moved in tandem. To accommodate for the risk that the prices of historically correlated securities will not move in tandem the clearing fund formula requires a

amount is the product of a GSCC-generated margin factor[10] and the total dollar value of the member's net settlement position that day.[11]

II. Discussion

The Commission believes that GSCC's proposal is consistent with the Act and in particular with section 17A thereunder.[12] Section 17(b)(3)(F) provides, among other things, that the rules of a clearing agency must be designed to ensure the safeguarding of funds and securities which are in the custody or control of the clearing agency or for which it is responsible.[13] GSCC's clearing fund formula, by providing GSCC with an effective mechanism for measuring the risk profile of its members' securities settlement obligations, is consistent with GSCC's responsibilities relating to the safeguarding of funds under the Act.

On April 12, 1990, the Commission, in two separate orders, granted temporary approval to significant changes to the two components of GSCC's clearing fund formula.[14] The Commission directed GSCC to assess the operation of the formula regarding the accuracy of margin factors, disallowance percentages, and the adequacy of GSCC's liquidity before permanent approval would be granted.[15] GSCC has assessed the formula's operation and has determined that the formula accurately assesses a clearing member's risk in all market conditions.

Margin Factors

The Commission directed GSCC, among other things, to consider ways to refine its analysis of price volatility, including procedures to factor in the effects of dramatic price movements, as a way of assessing the accuracy of GSCC's margin factors.[16] Since that time, GSCC has compiled three years of its own price volatility data. This data base includes securities such as zero-coupon government securities for which there is limited third-party data available. Accordingly, GSCC believes it is sufficient for assessing and monitoring the adequacy of its margin factors.

GSCC's Membership and Standards Committee of the Board of Directors reviews quarterly the sufficiency of GSCC's margin factors. In reviewing its margin factors, GSCC uses: (1) Its own short-term (most recent 90 days) and long-term (past year) data covering the mean plus two standard deviations and, separately, 99% of all price movements, and (2) historical price volatility data from Carroll, McEntee & McGinley Inc. which studies the current leading issue in each security category using the mean plus two standard deviations.

GSCC believes that the use of its own price volatility data in addition to data from third party vendors provides adequate data to enable GSCC to monitor its margin factors. According to GSCC, this data indicates that GSCC's margin factors are prudent and conservative, particularly on the long end of the maturity spectrum, where the greatest exposure exists for GSCC.[17] GSCC continues to believe that its own data base is the most accurate and meaningful source of price volatility data on government securities in existence across a broad spectrum of issues and products because it includes most inter-dealer trades in U.S. Treasury securities. At the same time, GSCC acknowledges that certain third parties such as GOVPX, Inc. ("GOVPK") have made significant steps toward disseminating last sale pricing information for government securities that is beneficial to GSCC. Thus, GSCC will continue to supplement its own data with that supplied by third parties.

Disallowance Percentages

The Commission also directed GSCC to monitor its proposed measures of correlation, and in the event they should fail to conform to historical levels, adjust its disallowance percentages accordingly.[18] GSCC continues to assess its measures of correlation against current and historical data. GSCC will adjust its disallowance percentages when necessary to ensure that GSCC's risk exposure is minimized.

Liquidity

The Commission also directed GSCC to monitor its funding requirements on a daily basis to ensure that GSCC, principally through the clearing fund, has sufficient liquidity during periods of high volatility to protect GSCC from contingencies stemming from participants' daily net settlement obligations.[19] Over the past three years GSCC has monitored funding requirements and has modified the clearing fund deposit collection process and member deposit requirements. These modifications include: Using internal price volatility data to determine margin requirements; incorporating forward-settling positions in members' 20-day average for determining clearing fund deposits; raising from 75% to 100% the cap on collection of a netting member's forward mark allocation payment; establishing new issuer letter of credit standards; obtaining authority to collect additional clearing fund deposits in times of market stress; requiring members to satisfy clearing fund deposit deficiencies earlier; collecting funds-only settlement payments an hour earlier; expanding the scope of Treasury securities that are eligible as clearing fund collateral; and correlating quarterly returns of excess margin with refunding

minimum margin amount that is the greater of either 50% of the participant's total gross margin amount or the average offset margin amount. *Id.*

[10] GSCC has established a margin factor for each maturity range within each product group that is designed to measure the potential volatility of prices in that maturity range. *Id.* at n. 16.

[11] Release No. 27901, *supra* note 2.

[12] 15 U.S.C. 78q–1 (1988).

[13] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[14] Previously, GSCC's clearing fund formula assessed the risk of a clearing member's positions based on its "gross" net settlement positions, without granting the member offsets for securities that display historical market price correlation. Release No. 27901, *supra* note 2. In the order granting temporary approval of GSCC's proposal to give its members credits for correlated offsetting net settlement positions, the Commission also temporarily authorized GSCC to use an automated system that enables GSCC to determine the price volatility of various securities issues. GSCC uses this information to assess its level of risk exposure and to adjust its margin factors accordingly. Moreover, the Commission also authorized GSCC to collect additional clearing fund deposits more quickly, whenever GSCC detects a risk stemming from a participant's higher than usual net settlement position. *Id.*

[15] See Release No. 27901, *supra* note 2.

[16] See *id.* See also Securities Exchange Act Release No. 27006 (July 7, 1989), 54 FR 29798 (approving GSCC's proposed changes to its netting system). Accurate margin factors help GSCC ensure that it is requiring its members to contribute a clearing fund deposit that adequately protects GSCC from risk exposure should a member default. In the event of a member default or insolvency, GSCC would be obligated to close-out and buy-in securities at price that might vary greatly from those of the previous day. In that case, an insufficient margin factor could cause GSCC to suffer significant losses. *Id.*

[17] GSCC's rules authorize GSCC to increase any of the margin factor percentages upon a determination that such increase is appropriate in light of market experience and conditions. GSCC may decrease margin factor percentages upon submission and review of a proposed rule change pursuant to Section 19(b)(2) of the Act. Release No. 27901, *supra* note 2 at n.55.

[18] Accurate measures of correlation are necessary in setting accurate disallowance percentages. Disallowance percentages are the factors by which GSCC reduces credits for offsetting positions (i.e., those displaying historical market price correlation sufficient to justify offsetting clearing fund formula credits and debits) to protect against the risk that market price correlation among offsetting securities is imperfect or will deviate from historical norms. Release No. 27901, *supra* note 2.

[19] Release No. 27901, *supra* note 2. GSCC also was directed to report to the Commission on a monthly basis any situation where GSCC could have made a special call for additional clearing fund deposits pursuant to GSCC rules and procedures and any amount assessed. *Id.* GSCC makes such calls frequently and has promised Commission staff prompt availability of such data. Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Richard C. Strasser, Attorney, Division, Commission (March 20, 1992).

periods.[20] These efforts have helped to ensure that the clearing fund remains at adequate levels while minimizing the drain on the liquidity of GSCC clearing members. GSCC understands that it is obligated to maintain adequate liquidity sources and to reassess periodically the adequacy of those sources. Accordingly, the Commission believes that the proposal is consistent with GSCC's responsibilities under the Act and should be approved on a permanent basis.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[21] that the proposal (File No. SR–GSCC–93–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–33239; File No. SR–GSCC–93–02]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Order Approving a Proposed Rule Change Relating to the Netting of Zero Coupon Government Securities

November 22, 1993.

On April 23, 1993, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the netting of book-entry zero coupon government securities. On June 7, 1993, the Commission published notice of the proposed rule change in the Federal Register to solicit comments from interested persons.[2] No comments were received. This order approves the proposal.

I. Description

The proposal authorizes GSCC to continue to offer net settlement services to its members for trades in book-entry zero coupon government securities ("zeros")[3] and clarifies GSCC's procedures for collecting additional clearing fund deposits to protect GSCC against the risk of a member or default on net settlement obligations.[4] In addition, the proposal clarifies GSCC's procedures for collecting increased clearing fund deposits.

GSCC's netting service for zeros will operate in essentially the same way as for other securities eligible for GSCC's trade netting service. In general, GSCC netting members must submit to GSCC for comparison and netting data on all of the member's eligible trades in zeros with other netting members. On each business day GSCC will net a member's trades to determine the member's net position (a net long position will result if purchases exceed sales; a net short position will result if sales exceed purchases; and a net flat position will result if purchases equal sales). GSCC will then match a long position with a short position in the same CUSIP[5] to net receive and deliver obligations. On the morning after trade date members will receive a Funds-Only Settlement Report, a Netted Trade Summary Report, and an Open Receive/Deliver Orders Report. These reports will provide members information regarding payments due from or owed to netting members, what trades entered the netting system and the resulting net, and the substitution of GSCC as the counterparty (novation) to all open netted positions.[6] Once the reports are available, each member must provide settlement instructions to its clearing bank. Settlement of net delivery obligations between each member and GSCC will be made over Fedwire on the day after trade date.

The proposal modifies GSCC's clearing fund formula to account for the market risk[7] associated with net trades in zeros GSCC has guaranteed. At the time of the initial temporary approval, GSCC created a new schedule of margin factors that reflected the greater volatility associated with zeros.[8] Because the margin factors for zeros are tailored to each maturity group, the projected volatility of zeros is reflected in the required margin subcomponent.[9] GSCC's margin factors are the same for zeros and non-zeros with remaining maturities of up to two years.[10] However, at the longest remaining period to maturity (i.e., over fifteen years), the zero margin factors is two and a half times as great as the non-zero factor.[11]

Offset class	Remaining maturity	Zero	Non-Zero
D	2 to 4 years	.625	.500
E	4 to 5 years	.938	.625
E	5 to 7 years	1.313	.750
F	7 to 10 years	1.870	.935
F	10 to 15 years	2.013	1.250
G	Over 15 years	3.625	1.450

GSCC does not allow any offsets between zeros and non-zeros because available historical data indicates that there is a poor correlation between these classes of securities. A netting member's required margin, therefore, will be the greater of either the average offset

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[20] See Securities Exchange Act Release No. 33237 (November 22, 1993) (order approving File No. SR–GSCC–91–4). See also letter from Jeffrey F. Ingber, General Counsel, GSCC, to Richard C. Strasser, Attorney, Division, Commission (March 29, 1992).

[21] 15 U.S.C. 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities and Exchange Act Release No,. 32386 (May 28, 1993), 58 FR 31985.

[3] The zeros that are eligible for GSCC's netting system are book-entry government securities including STRIPS (STRIPS is an acronym for Separate Trading of Registered Interest and Principal of Securities, which are pre-stripped, book-entry, zeros that are direct obligations of the U.S. Treasury) and zeros issued by agencies of the U.S. Government such as the Federal Home Loan Mortgage Corporation and the Student Loan Marketing Association. GSCC will not make eligible for netting generic or privately stripped securities such as Certificates of Accrual on Treasury Securities or Lehman Investment Opportunity Notes.

[4] See Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055, for a more detailed discussion of GSCC's netting system.

[5] "CUSIP" is an acronym for the Committee on Uniform Securities Identification Procedures. The CUSIP numbering system was developed by a committee of the American Bankers Association bearing the same name and was created to identify specific securities issues. Each eligible netting security issue has its own separate CUSIP number that GSCC uses in its netting system to group trades for the net.

[6] Once netting has occurred, GSCC is liable to pay for securities sold to a member or to deliver securities bought from a member. GSCC requires members to make deposits to GSCC's clearing fund to help protect against the risk of loss to GSCC and non-defaulting clearing members in the event of a netting member default.

[7] "Market risk" is the risk that the value of the securities GSCC has guaranteed will decline so that a subsequent trade will result in financial loss.

[8] The current clearing fund formula has two components, the funds-only settlement component and the securities net settlement component. A netting member's required clearing fund deposit will be the sum of the two components. GSCC's margin factors are an element in the securities net settlement component of the clearing fund formula. The securities net settlement component of GSCC's clearing fund formula is essentially the same as the member's required margin deposit. This component will be referred to hereinafter as the "required margin" or the "required margin deposit."

[9] The remaining maturity of forward settling trades in zeros is measured from the date of issuance of the underlying securities.

[10] GSCC's margin factors are based upon the Treasury haircut requirements and periodic market volatility data obtained from other sources. However, GSCC continues to collect historical data for zeros, and GSCC reviews its price volatility data for consistency and quarterly market volatility data provided by Carrol, McEntee & McGinley Inc.

[11] GSCC's margin factors for zeros and non-zeros are:

margin [12] or 50% of the gross margin amount.[13]

GSCC monitors a clearing member's positions in zeros in relation to the member's total positions in other zeros and in relation to the member's total non-zero position. A netting member is deemed to have a high concentration in zeros generally if the dollar value of a member's net settlement positions in zero equals or exceeds 25% of the dollar value of the member's net settlement positions in all issues eligible for GSCC's netting system. A member is deemed to have a high concentration in zeros within the same maturity range if the dollar value of the member's net settlement positions in zeros within the same maturity range equals or exceeds 50% of the total dollar value of the member's net settlement positions in zeros.

If a clearing member is found to have an unusually high concentration in zeros generally or as compared to other zero issues, GSCC may require the member to make an additional clearing fund deposit. The additional deposit may be as great as 200% of the netting member's highest single business day's required fund deposit during the recent twenty business days. However, if GSCC's Board of Directors ("Board") determines that such an amount is not sufficient for the protection of GSCC and its members, the Board will set a higher amount. GSCC's Membership and Standards Committee reviews periodically the procedure for collecting clearing fund collateral to determine the appropriateness of the procedure.

The proposal clarifies GSCC's existing procedures for requiring additional clearing fund deposits.[14] Consistent with GSCC's existing rules, GSCC may notify a clearing member that it is required to make an additional deposit to the clearing fund if: (1) The member is on surveillance status and the member's required clearing fund deposit exceeds the value of the member's deposits to the clearing fund; (2) the member's required clearing fund deposit exceeds by 25% or more the value of the member's deposits to the clearing fund; (3) the member's required clearing fund deposit exceeds by $250,000 or more the value of the member's deposits to the clearing fund; or (4) the member's funds-only settlement amount exceeds by 25% or more the member's average daily clearing fund funds-only settlement amount over the most recent twenty business days. If a member is so notified, the member may satisfy the requirement by making the deposit in the form of cash, eligible Treasury securities, eligible letters of credit, or a combination of any of the above. GSCC continues to require that the additional deposit be made by the close of business on the day of notification. However, if the notice is not made available to the member prior to 3 p.m., eastern time, the additional deposit requirement may be satisfied by 12 noon on the following business day.

II. Discussion

The Commission believes GSCC's proposal is consistent with the Act and particularly with sections 17A(b)(3) (A) and (F) of the Act.[15] Those sections require that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. Section 17A(b)(3)(F) further requires the rules of a clearing agency to be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest. As discussed below, the Commission believes the proposed rule change is consistent with these provisions.

The proposal extends the benefits of GSCC's centralized, automated netting system to netting members that trade in zeros. In this regard, the Commission believes that GSCC's proposed netting procedure is designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of government securities transactions and provides increased efficiency for GSCC netting members.

The commission believes GSCC's proposal reduces the risk associated with the clearance and settlement of zeros. As stated above, due to the lack of historical price and volatility data on which to base its margin factors for zeros, GSCC's bases its margin factors for zeros on the Treasury haircut requirements for zeros.[16] Because zeros with remaining time to maturity in excess of two years exhibit greater volatility than non-zero securities in the same maturity ranges, and because zeros generally are more sensitive to fluctuations in interest rates and movements in the market, including zeros in its netting system created new risk for GSCC and its membership. The Commission believes, therefore, that GSCC's proposal to establish different margin factors for zeros than for non-zeros is prudent.

GSCC's proposal enables GSCC to measure the market risk and potential financial exposure presented by a specific transaction or a netting member's overall position. GSCC employs monitoring procedures that may result in an increased clearing fund deposit if GSCC determines that a netting member's securities position presents an increased likelihood of financial exposure. At the very least, concentration in zeros above the specified levels will trigger increased surveillance of the netting member's positions. In addition, GSCC prohibits offsets among zeros and non-zeros because of the historical poor correlation between zeros and non-zeros. The Commission therefore believes that GSCC's proposal helps ensure the safeguarding of securities in GSCC's possession or under GSCC's control.

In the initial order approving the netting of zeros on a temporary basis,[17] the Commission requested that GSCC monitor its clearing members' concentration in zeros, and GSCC report to the Commission quarterly any situation where GSCC could have made a special call for additional clearing fund deposits pursuant to GSCC's Rules and Procedures, and the amount assessed, if any. The commission requested also that GSCC continue to monitor the adequacy of its zero netting system and, in consultation with the Commission, make adjustments as necessary. The commission stated that it expected GSCC to continue to build its base of historical and implied volatility data and to continue exploring a means of analyzing such data, including

[12] The offset margin amount is calculated by subtracting a credit for offsetting net settlement positions from the gross margin amount of the member's net settlement positions. The average offset margin amount is the average offset margin for the last 20 days during which GSCC calculated net settlement positions.

[13] The gross margin amount is the applicable margin factor multiplied by the total dollar value of the member's net settlement position.

[14] GSCC calculates daily each netting member's clearing fund contribution requirement and determines whether a netting member's deposit exceeds its required clearing fund contribution. A member's clearing fund contribution requirement is based on the risk to GSCC resulting from the member's daily settlement activities.

[15] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[16] For zeros with maturities ranging from five years to over fifteen years, the percentage spread between GSCC's margin factors for zeros and non-zeros exceeds the percentage spread between Treasury haircut factors for zeros and non-zeros in three out of four of the maturity ranges.

[17] Securities Exchange Act Release No. 28842 (January 31, 1991), 56 FR 5032.

procedures to consider the effects of dramatic price movements.[18]

GSCC has represented to the Commission that in monitoring its clearing members' concentration in zeros, GSCC has not made a special call for an additional clearing fund deposit nor has GSCC found a situation where GSCC could have made a special call for additional clearing fund deposits pursuant to GSCC's Rules and Procedures.[19] GSCC has represented also that its netting system has functioned efficiently and that it will be able to continue to include zeros in its netting system and operate its netting system efficiently and within time frames established by GSCC during current and reasonably anticipated future average daily and peak processing days.[20] Further, GSCC has collected over two year's worth of historical volatility data and developed an automated system for analyzing such data.[21] The Commission believes it is critical for GSCC to continue to assess daily historical price movements of zeros and the implications of such movements on GSCC's margin factors applicable to zeros. This will add precision to GSCC's risk management processes and help minimize the risk associated with clearance and settlement of zeros.

III. Conclusion

On the basis of the foregoing, the Commission finds that GSCC's proposed rule change is consistent with Section 17A of the Act.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–GSCC–93–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29355 Filed 11–30–93; 8:45 am]

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[18] GSCC may increase any of the margin factor percentages upon a determination that such increase is appropriate in light of market experience and conditions. GSCC, however, may decrease margin factor percentages upon submission and review of a proposed rule change pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2) (1988). The Commission stipulated a similar requirement in an order temporarily approving modifications to GSCC's clearing fund formula. See Securities Exchange Act Release No. 27901, *Supra* n.4.

[19] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Jack Drogin, Branch Chief, Division of Market Regulation, Commission (June 16, 1993).

[20] *Id.*

[21] *Id.*

[22] 17 CFR 200.30–(a)(12) (1990).

[Release No. 34–33240; File No. SR–GSCC––93–03]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Order Approving Proposed Rule Change Relating to the Netting of Forward-Settling Trades in Government Securities

November 22, 1993.

I. Introduction

On May 28, 1993, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the netting of forward-settling trades in government securities and the form of letter of credit that GSCC will accept as a clearing fund deposit. Notice of the proposed rule change was published in the **Federal Register** on June 7, 1993.[2] No comments were received. This order approves the proposed rule change.

II. Description

On April 12, 1990, the Commission approved on a temporary basis, until April 30, 1992, a proposed rule change (SR–GSCC–90–01)[3] that expanded GSCC's netting service to include forward-settling trades in government securities ("forward trades"). Subsequently, the Commission extended, on a temporary basis until June 30, 1993, GSCC's rules relating to the netting of forward-settling trades.[4] The current proposal would authorize GSCC to establish this service permanently.

Under the proposal, the term "forward trades" includes members' purchases and sales of eligible securities,[5] which have been successfully compared for settlement on a later date. This definition encompasses trades commonly known as "when, as, and if issued" ("when-issued" or "W/I" trades). When-issued trading extends from the day the auction is announced[6] until the issue day of the Treasury security traded.[7] Usually, there is a ten day lag between the time securities are auctioned and the time they are issued. Under GSCC's proposal, trades with a scheduled settlement date of fifteen business days or less after the business day on which the comparison report for the trade data is issued would be eligible for netting if such trades meet the already established netting eligibility requirements.[8]

GSCC's proposal clarifies the procedures to allow participants to submit data for forward trades prior to the date of the auction of the securities.[9] The comparison operation for forward trades is conducted in the same manner as regular trades.[10]

[1] 15 U.S.C. 78s(b) (1990).

[2] Securities Exchange Act Release No. 32386 (May 28, 1993), 58 FR 31981.

[3] Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066.

[4] Securities Exchange Act Release Nos. 30661 (April 30, 1992), 57 FR 19654 (approving the netting of forward settling trades through July 31, 1992), 31065 (August 21, 1992), 57 FR 39255 (approving the netting of forward settling trades through October 30, 1992), 31384 (October 30, 1992), 57 FR 52807 (approving the netting of forward settling trades through March 31, 1993), and 32090 (April 1, 1993), 58 FR 16289 (approving the netting of forward settling trades through June 30, 1993).

[5] Pursuant to GSCC's Rules, eligible securities include securities falling within the definitions set forth in sections 3(a)(42) (A), (B) and (C) of the Act, 15 U.S.C. 78c(a)(42) (A), (B) and (C) (1988). These definitions include securities that are direct obligations of the United States, obligations guaranteed as to principal or interest by the United States or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest.

[6] The U.S. Treasury relies on auctions carried out by the Federal Reserve System to sell new notes and bonds. The Treasury announces a new issue a week or more before the auction date. The announcement states the amount to be issued, the maturity date of the securities, and their denomination. In addition, the announcement designates the series and the identifying CUSIP numbers for the securities to be issued.

[7] Auctions of Treasury securities are based on a yield-bid system. During the auction period, participants bid yield to two decimal points for specified quantities of the new issue. After bids are received, on the basis of both the bids and the amount it wishes to borrow, the Treasury determines the price below which bids are not accepted ("stop-out price"). The Treasury then rounds the value of the coupon on the security to the nearest one eighth of 1% necessary to make the average price charged to successful bidders equal to $100.00 or less. Once the coupon on the issue is established, each successful bidder is charged a price, which is determined so that the yield-to-maturity on a bidder's securities equals the bidder's yield bid. Stigum, Fabozzi, U.S. Treasury Obligations, in The Handbook of Fixed Income Securities 261–62 (F. Fabozzi, I. Pollack ed. 1983).

[8] In addition to the proposed requirement, in order to be eligible for netting a trade must meet the following requirements:

(1) Trade data must have been compared through GSCC's comparison system;

(2) The data on the trade is listed on a report that has been made available to netting members;

(3) Netting of the trade will occur on or before its scheduled settlement date;

(4) Both parties to the trade are netting members, and

(5) The underlying securities are eligible netting securities.

Notwithstanding these requirements, GSCC may exclude any trade or trades from the netting system. GSCC Rules and Procedures, R. 11 section 2.

[9] Trade data submitted for comparison must be entered, on an item-by-item basis or via bulk transmission, by the time established by GSCC and should include quantity, security identification, contra-party, and trade value. In addition, GSCC may require the submission of additional identifying data.

[10] Upon submission of trade data, GSCC will validate and match the information in order to

GSCC has implemented a yield-to-price conversion program which allows forward trades to be compared and netted on the day they are first submitted for comparison, without the need to resubmit the trade after the auction date.[11] Trading in the when-issued market is conducted on the basis of the current market yield because the coupon rate has not yet been set. Accordingly, as part of the process of clearing when-issued trades, GSCC converts member trades from a yield basis to a price basis using the U.S. Treasury Department's formula ("yield-to-price conversion"). The conversion allows GSCC to novate and guarantee settlement of when-issued trades before the auction thus reducing the counterparty settlement risk during the when-issued trade period.

The netting of forward trades could pose credit and liquidity exposure to GSCC and other members utilizing the system. Accordingly, GSCC established certain safeguards including clearing fund and margin requirements for positions involving forward trades. These safeguards are designed to protect GSCC from the liquidation exposure stemming from the size of net settlement positions in forward trades. The proposal revises those safeguards, based on GSCC's experience during the last few years. Those changes involve forward mark allocation and clearing fund payments.

GSCC assesses netting members, except those who are inter-dealer brokers,[12] a required forward mark allocation amount with regard to forward net settlement positions. This payment amount is determined each business day during the forward period on a CUSIP-by-CUSIP basis. The required forward mark allocation amount is based on the difference in dollar value between the aggregate amount of the contract values for the forward trades of the securities comprising each forward net settlement position and the aggregate of the system price for the same positions on the day when such amount is calculated.[13]

In order to determine the forward mark allocation for a netting member with a forward debit mark amount, GSCC first calculates the total forward debit marks of all netting members with forward trades. GSCC then establishes a fraction, the numerator of which is the total debit mark of the five largest forward debit mark amounts among all netting members (including, for this purpose, netting members who are inter-dealer brokers), and the denominator of which is the total forward debit mark amounts of all netting members (excluding, for this purpose, netting members who are inter-dealer brokers). GSCC derives the forward mark allocation amount for each netting member with forward trade by multiplying the member's forward debit mark amount by this faction. The proposed fraction, however, may not be higher than 100%[14] nor less than 25% of a participant's forward debit mark amount.

The Commission recently approved a proposed rule change revising members' clearing fund requirements to include a twenty-day average of each member's forward trades in calculating that member's contribution.[15] Prior to that rule change, a member's net securities and funds-only settlement obligation arising from forward trades was factored into the twenty-day average, but only on the day forward trades settled and only for the purpose of calculating the member's current clearing fund requirement. As modified, GSCC may include in the calculation of a netting member's required clearing fund deposit the weighted average of that netting member's forward net settlement position over the most recent twenty days.

Under this proposal and until further notice, GSCC will include all recurring forward net settlement positions in the twenty-day average. GSCC, however, retains the discretion to take specific CUSIPs out of the twenty-day average after the settlement obligations of the securities underlying the forward position are met.[16]

GSCC believes that its own data base is the most accurate and meaningful source of price volatility data on government securities in existence across a broad spectrum of issues and products. Because of the lack of closing price data in the government securities market, GSCC's system price may, on rare occasions, not accurately reflect the inter-dealer closing price on days where there is substantial intra-day price volatility.[17]

The current proposal would modify the form of letter of credit that GSCC will accept as a deposit to its clearing fund.[18] Under the proposed rule change, to be eligible as clearing fund collateral, a letter of credit must state explicitly that: (1) It will be duly honored upon presentment to the issuing bank,[19] (2) partial drawings are permitted, and (3) the letter of credit is issued under and governed by Article 5 of the New York Uniform Code. In addition, each such letter of credit must be irrevocable. A letter of credit may neither be revoked nor amended to reduce its amount except upon: (1) The issuer's written notice to GSCC of its intent to revoke, given not less than two full business days prior to the date of such revocation, and (2) GSCC's consent to

ensure that the details of each trade are in agreement. GSCC will then generate a report setting forth whether the trade has been compared, remains uncompared or is pending comparison. Compared trades are those where there is an exact match of all data except for contract amount, where members can specify a tolerance within which money settlement amounts may vary. Uncompared trades are those for which the counterpart either did not submit data or did not submit data which agreed in all respects. Trades pending comparison are those where the data submitted by another party against the member did not match any trade the member submitted.

[11] See Securities Exchange Act Release No. 30170 (January 8, 1992), 57 FR 1774 (order approving yield-to-price conversion for when-issued trades). See also Securities Exchange Act Release No. 29732 (September 24, 1991) 56 FR 49937 (order temporarily approving, until January 31, 1992, yield-to-price conversion of when-issued trades).

[12] An inter-dealer broker is a GSCC netting member who acts exclusively as a broker on behalf of netting members and/or eligible netting applicants. GSCC Rules and Procedures, R. 1.

[13] See Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055.

[14] For a more complete discussion of forward mark allocations, see Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066. See also Securities Exchange Act Release No. 33237 (November 22, 1993).

[15] See Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055 (order approving proposed rule until April 30, 1992); Securities Exchange Act Release No. 32381 (May 28, 1933), 58 FR 31983 (notice of filing of proposal to extend temporary approval or make permanent proposed rule).

[16] For a more complete discussion, see Securities Exchange Act Release No. 33237 (November 22, 1993).

[17] GSCC is able to calculate, on a daily basis, a system price that is as close as possible to the closing inter-dealer price. For this purpose, GSCC will calculate the average price for all trades compared for netting, weighing each trade according to its relative size. If, however, as a result of special market conditions, this average is distorted, GSCC, based on collected data, will choose instead a price as close as possible to the inter-dealer closing price. See Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055.

[18] GSCC accepts clearing fund deposits in the form of cash, eligible Treasury securities, or letters of credit issued by an approved institution. The Commission recently approved a proposed rule change modifying the standards for issuers of letters of credit used to collateralize GSCC's clearing fund. See Securities Exchange Act Release No. 33237 (November 22, 1993).

[19] One of the disadvantages of letters of credit is that the funds secured thereunder may not be immediately realizable. Under the commercial laws of most states, a bank issuing a letter of credit may defer honor of a payment request until the close of business on the third day following receipt of the documentation necessary to a request for payment. See e.g., N.Y. Uniform Commercial Code Section 5-112(1)(a) (McKinney 1964). Under the form of letter of credit required by GSCC, any letter of credit presented by GSCC prior to 5 p.m. must be paid by the bank before 3 p.m. on the next business day. Telephone call between Jeff Ingber, General Counsel, GSCC and Christine Sibille, Staff Attorney, Commission (July 29, 1993).

such revocation, which will be conditioned upon the member having sufficient collateral on deposit in GSCC's clearing fund deposit. In addition, the letter of credit must be readily pledgeable under GSCC's line of credit arrangement, currently with Security Pacific National Bank of New York, for at least 80% of the letter of credit's face value.[20]

III. Discussion

Section 17A(b)(3)(A) and (F) of the Act[21] require clearing agencies to have rules and to be organized in a manner that will give them the capacity to facilitate and promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities for which they are responsible. The Commission believes that GSCC's proposal meets these statutory requirements.

In the Release announcing standards for the registration of clearing agencies,[22] the Division of Market Regulation stated that clearing agencies should establish an appropriate level of clearing fund contribution based, among other things, on its assessment of the risks to which it is subject. GSCC's comparison and netting system for forward trades provides an effective means of reducing a member's settlement obligations, thereby offering a significant reduction in risks to the market place. At the same time, GSCC has designed and expanded safeguards in order to limit the inherent exposure associated with the comparison process of forward trades and to reduce the financial risk associated with the netting and settlement of such trades. Finally, GSCC has revised its requirements for letters of credit accepted as collateral for clearing fund purposes to help ensure the liquidity of those deposits.

The proposal will continue to require netting members to submit all forward trades for comparison; allow members to have forward trades compared and netted on the day those trades are submitted by converting yield based trades to price based trades; and settle compared and netted forward trades on settlement day. For trades that are not netted under GSCC's yield-to-price conversion, the comparison of forward trades will enhance the matching process by securing an earlier agreement as to the details of trades that otherwise would have to wait up to two weeks for comparison on a price and value basis. The Commission therefore believes that netting of forward trades will promote the prompt and accurate clearance and settlement of forward-settling securities by improving the capacity of GSCC and its members to monitor exposure, thus reducing unnecessary risks to the investing public.

Nevertheless, the Commission acknowledges that including forward trades into netting increases GSCC's financial exposure because forward trades cannot be settled until the date of issuance. GSCC, however, assumes the counterparty credit risk from the day following those trades until settlement date. To protect itself against this increased risk, GSCC collects a forward mark allocation payment for compared forward trades until settlement day.[23]

The Commission believes that the inclusion of forward positions in the twenty-day average calculation to determine a member's required clearing fund deposit is an adequate safeguard against the risk posed to GSCC by netting forward activity on an ongoing basis. GSCC has been including forward positions in the twenty-day average for three years, and the practice has proven adequate. The Commission, however, remains concerned about the effect of removing specific CUSIPs from the twenty-day average and expects GSCC to continue to monitor and report to the Commission on the use of such discretion.[24]

GSCC requires that letters of credit used to satisfy a member's clearing fund deposit and forward mark allocation payment be non-revocable. The Commission believes that GSCC's modifications to its form of letter of credit are consistent with the Act. The modifications provide liquidity to the clearing fund by ensuring that GSCC can draw down on a letter of credit when required. This assurance should assist GSCC in meeting its obligations including trading netting and therefore promote the safeguarding of securities and funds in GSCC's possession. Accordingly, the Commission believes that GSCC's proposal has struck an appropriate balance between controlling financial exposure by providing adequate risk reduction measures and by providing itself with the ability to draw down quickly on letters of credit when necessary.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particular with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–GSCC–93–03) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29356 Filed 11–30–93; 8:45 am]

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[Release No. 34–33237; File No. SR–GSCC–91–04]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Order Approving a Proposed Rule Change Concerning Changes to the Margin and Funds Collection Processes

November 22, 1993.

I. Introduction and Summary

On November 7, 1991, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to, among other things, modify GSCC's margin and funds collection processes. Notice of the proposal was published in the **Federal Register** on January 9, 1992, to solicit comments on the proposed rule change from interested persons.[2] On April 27, 1992, and April 30, 1992, GSCC subsequently filed letter amendments ("Amendments") to its proposal.[3] No

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[20] *Id.*

[21] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[22] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

[23] See Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066.

[24] GSCC has represented that it will notify the Commission each time it excludes specific CUSIPs from the calculation of the twenty-day average for forward net settlement positions. After such notification, GSCC will file a written report discussing (1) the effect the exclusions had on its members with the five largest positions and (2) the impact the exclusions had on the Clearing Fund. Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission (April 27, 1992). To date, GSCC has never excluded specific CUSIPs from the twenty-day average. Telephone call between Jeff Ingber, General Counsel, GSCC and Jack Drogin, Branch Chief and Christine Sibille, Staff Attorney, Commission (July 14, 1993).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 30135 (December 31, 1991), 57 FR 942.

[3] Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation ("Division"), Commission (April 27, 1992); and letter from Jeffrey F. Ingber, General Counsel, GSCC, to Ester Saverson, Jr., Branch Chief, Division, Commission (April 30, 1992). Because the Amendments provided only non-material changes to the proposal, the Commission did not publish them for public notice.

comments were received. This order approves the proposal, as amended.

The proposed rule change: (1) Authorizes GSCC to use its own price volatility data to determine margin requirements; (2) allows GSCC to include in the calculation of a netting member's required clearing fund deposit the weighted average of the netting member's forward net settlement positions over the most recent 20 business days; (3) removes the 75% limitation on the forward mark allocation payments; (4) establishes new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocation payments and allows GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (5) makes certain other changes to the clearing fund by: (a) Granting GSCC the ability to increase clearing fund requirements in times of market stress; (b) expanding the scope of Treasury securities that are eligible as clearing fund collateral; (c) requiring netting members to satisfy a deficiency in the clearing fund deposit on the day of notification of the deficiency; (d) requiring members to make funds-only settlement payments by 9 a.m.,[4] an hour earlier than previously required; and (e) correlating quarterly returns of excess margin with refunding periods. The proposed modifications permit GSCC to tailor its procedures for margin and funds collection to GSCC's current needs and to ensure that the potential financial exposure from the operation of GSCC's netting system does not expose GSCC to undue financial risk.[5]

GSCC's clearing fund and its margin system are one of the primary safeguards GSCC employs to protect GSCC and its membership against counterparty credit risk.[6] GSCC's clearing fund[7] is designed: (1) To have on deposit from each netting member cash or other collateral sufficient to satisfy a loss to GSCC as a result of that member's default and close out of settlement positions; (2) to maintain a total asset amount sufficient to satisfy potential losses to GSCC resulting from the default of more than one member and the failure of the counterparties of that member to pay their *pro rata* allocation of loss; and (3) to ensure that GSCC has sufficient liquidity at all times to meet its payment and delivery obligations.[8] Similarly, a member's required margin deposit is intended to protect against the risk that the member will default on its net settlement position. The process of determining a member's required margin deposit begins once trades have been netted and GSCC has established net deliver and receive obligations. GSCC calculates a member's required margin deposit based on the member's net settlement obligations.[9]

II. Description

A. Authority to Use GSCC's Price Volatility Data to Determine Margin

The proposed rule change allows GSCC to consider routinely its own price volatility data base in setting its margin factors. GSCC now has its own price volatility data base, which reflects prices derived from par-weighted averages of compared trades in every government security CUSIP[10] that is eligible for comparison by GSCC, including zero-coupon government securities, for which there is very limited third-party data available. In certain circumstances, for example, for specific CUSIPs that do not follow the yield curve or for the time periods that are shorter and more focused than a quarter (i.e., a refunding period), this price monitoring data may be a more valid indicator of price volatility for margining purposes than GSCC's current margin schedule.

GSCC uses its own price volatility data base in conjunction with third party data from other sources. GSCC's current margin factor schedule is based on daily price volatility data supplied by Carroll, McEntee and McGinley. This data is calculated on a quarterly basis for securities in particular maturity ranges. The GSCC data base allows it to look at price volatility on a daily basis, determine the volatility of individual government securities issues, and determine the appropriate confidence level.

B. Factoring Into the 20-day Average Forward Net Settlement Positions

Currently, a member's net securities and funds-only settlement obligations arising from forward-settling trades[11] is factored into the 20-day average calculation to determine a member's clearing fund requirement but only on the day the forward-settling positions

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[4] All times are Eastern Time unless indicated otherwise.

[5] In 1989, following GSCC's temporary registration as a clearing agency, GSCC implemented a netting system and safeguards designed to limit foreseeable financial exposure to GSCC and its members from the operation of that system. Securities Exchange Act Release No. 27006 (July 7, 1989), 54 FR 29798. GSCC subsequently filed a proposed rule change to modify that portion of its safeguards system relating to GSCC's clearing fund formula to reflect more accurately GSCC's potential liquidation and default risks associated with member obligations to deliver or receive securities. Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055. During the five years that GSCC has provided comparison and netting services for government securities, GSCC has continued to refine its operations and to expand its netting service. GSCC's services now include facilities for netting forward-settling trades and zero-coupon government securities, which are being approved concurrently with this filing. See Securities Exchange Act Release Nos. 33240 (November 22, 1993) approving the netting of forward-settling trades [File No. SR–GSCC–93–03]; and 33239 (November 22, 1993) approving the netting of zero-coupon government securities [File No. SR–GSCC–93–02].

[6] Currently, GSCC has 80 members, 58 of which are netting members and 22 are comparison-only members. All netting members are required to contribute to GSCC's clearing fund. GSCC recently established two new categories of membership in its netting system for dealers and interdealer brokers, respectively, designated as Category 2, and new membership criteria including net capital and clearing fund requirements for those new members. As users of GSCC's netting system, Category 2 dealers and interdealer brokers are required to share in the loss allocation scheme; however, unlike Category 1 dealers, the required clearing fund deposit for Category 2 dealers is calculated without taking into account offsetting positions; margin factors applicable to Category 2 dealers' positions are set at a higher confidence level than for Category 1 dealers (99%); and the forward mark allocation for such members is calculated based on the entire debit mark amount. Category 2 interdealer brokers are treated the same as Category 1 dealers for purposes of determining the applicable clearing fund requirements. GSCC believes this method appropriately accounts for the risk posed to GSCC when a Category 2 interdealer broker's settlement positions are novated. See Securities Exchange Act Release No. 32722 (August 5, 1993), 58 FR 42993, for a more detailed discussion of GSCC's categories of membership and the applicable clearing fund and margin requirements.

[7] The clearing fund requirement for dealer netting members consists of two parts: (1) the funds-only settlement portion, i.e., 125% of the member's average daily funds-only settlement amount over the most recent 20 business days, not including certain adjustment payments which are included in the daily funds-only settlement obligation and (2) the liquidation risk portion, i.e., the greater of the margin amount on the member's net settlement positions taking into account offsetting positions averaged over the most recent 20 business days, or 50% of the margin amount for that business day on the member's net settlement positions calculated without taking into account offsetting positions. The funds-only settlement portion of the clearing fund calculation consists of the net TAP debit or credit; the required forward mark allocation payment (offset by the value of the forward collateral held on deposit with GSCC); the net debit or credit fail mark; coupon adjustment; and redemption adjustment.

[8] Department of the Treasury, Commission, and Board of Governors of the Federal Reserve System, Joint Report on the Government Securities Market (January 1992) (citing Jeffrey F. Ingber, Overview of the Government Securities Clearing Corporation (August, 1991) ("Overview")).

[9] Securities Exchange Act Release No. 28842 (February 7, 1991), 56 FR 5032.

[10] CUSIP is an acronym for Committee on Uniform Securities Identification Procedures.

[11] Forward-settling trades are trades with a scheduled settlement date one or more business days after the usual settlement date (i.e., the day following the trade date). For forward trades to be eligible for GSCC's netting system, the scheduled settlement date must be no more than 15 business days after the date the trade is compared.

settle and only for the purpose of calculating the member's current clearing fund requirement. The proposal allows GSCC to include in the calculation of a netting member's required clearing fund deposit the weighted average of a netting member's forward net settlement positions over the most recent 20 business days. GSCC, however, retains the discretion to take specific CUSIPs out of the 20-day average after the securities underlying the forward positions are issued.[12]

C. Removal of 75% Limitation on the Forward Mark Allocation Payments

Currently, a member's forward mark allocation payment[13] is limited to 75% of a participant's forward debit mark amount. The proposal removes the 75% limitation on a member's forward mark allocation payment but does not affect the method used to calculate the forward marks.

GSCC determines the amount to be collected first by calculating each member's forward-settling debit mark requirement ("debit mark"). Second, GSCC aggregates the debit marks of the members with the five largest debit mark amounts on that day including interdealer brokers ("five largest debit marks"). Third, GSCC aggregates the debit mark amounts of all members for that day minus the total of the debit marks of all interdealer broker members for that day ("total debit marks"). The amount that GSCC may collect from each member is expressed in terms of a percentage that is the five largest debit marks divided by the total debit marks. Fourth, GSCC multiplies each member's debit mark by that percentage to determine the amount that may be collected.[14] The proposal eliminates the current 75% limitation and allows GSCC to collect up to 100% of a member's forward debit marks.

D. Letter of Credit Standards

GSCC accepts clearing fund deposits in the form of cash, eligible Treasury securities, or letters of credit issued by an approved institution. Currently, GSCC rules provide that a bank or trust company that is organized under federal or state law may become an approved issuer if it is permitted by law to lend to any single borrower an amount equal to at least $10 million, or has a rating for its short-term obligations of "A–1" or better by Standard & Poor's Corporation ("S&P") or "P–1" or better by Moody's Investors Service, Inc. ("Moody").[15] A foreign bank with a state or federal branch in the United States may become an approved issuer if it has either a "P–1" or an "A–1" short-term obligations rating, and it has total worldwide consolidated bank assets of at least $1 billion.

The proposal requires a domestic or foreign bank, in order to qualify as an issuing bank, to have either (1) $750 million in total shareholders' equity and a short-term obligations rating of not less than A–2 or P–1.[16] GSCC requires that the short-term ratings be the ratings for the unsecured, uninsured, unguaranteed short-term obligations of the issuing bank. Further, a bank will not meet GSCC's letter of credit issuer standards if the bank's S&P or Moody's short-term obligations rating is lower than A–2 or P–2 respectively. Thus, a "split" rating of A–2/P–3 or P–2/A–3 will not be acceptable.

For a bank to be approved and to continue as an issuing bank, it must agree to confirm on a quarterly basis that it is maintaining continued compliance with the applicable capital standards established for it by each of its regulatory authorities. GSCC will not approve as an issuer of letters of credit a foreign bank acting through a branch or agency in the United States unless the foreign bank provides to GSCC a guarantee of performance by the branch or agency bank.

An issuer's letters of credit must be able to be readily pledged for at least 80% of the letter's stated value.[17] GSCC will continue to impose a 1% haircut[18] on a letter of credit that may be readily pledged for at least 95% of its stated value. For a letter of credit that may be readily pledged for at least 80% of its stated value, GSCC will value the letter of credit at the amount at which the letter of credit may be readily pledged.[19]

Currently, GSCC may not accept a letter of credit issued by any institution, if, as a result of such acceptance, more than 20% of the letters of credit held by GSCC as collateral (for both the required clearing fund deposits and the forward mark allocation payments) will consist of letters of credit issued by that institution, unless GSCC's Board of Directors ("Board") determines that a higher amount is appropriate. Although GSCC's Board has never lifted this restriction,[20] GSCC's proposal eliminates the Board's discretion to exceed the 20% concentration limit.[21] The proposal modifies the 20% limitation to the lesser of: (1) 20% of the total dollar value of the clearing fund or (2) 20% of the total collateral for both clearing fund deposits and forward mark allocation payments.

E. Other Changes to Clearing Fund

1. Increased Clearing Fund Requirements in Times of Market Stress or High Market Volatility

The proposal allows GSCC to calculate the liquidation risk portion of a member's clearing fund requirement based on the member's current day's settlement positions. In effect, this allows GSCC to collect the entire amount of the member's net securities settlement obligation for that day. The proposal also allows GSCC to set a

[12] Because of the magnitude of trading activity in certain issues during the quarterly refunding period and the relatively large net settlement positions that result, GSCC anticipates that only certain positions that arise from member's quarterly refunding activity or similar activity that creates large one day net settlement positions will be taken out of the 20-day average.

[13] The forward mark allocation payment is a margin payment calculated on a member's forward trades (*i.e.*, the difference between the original contract value and GSCC's current system value).

[14] *E.g.*, if the aggregate debit mark is $100,000,000, and $85,000,000 of the aggregate is associated with the netting members with the five largest debit mark amounts, the percentage that would be applied to each member's debit mark would be $85,000,000/$100,000,000 or 85%. The amount of forward mark GSCC could collect from any member would the 85% of the member's debit mark position.

[15] A rating of A–1 or A–2 or a rating of P–1 or P–2 are the two highest ratings given by S&P and Moody's, respectively. S&P and Moody's are the most often cited organizations that publicly rate the credit quality of securities issuers. The New York Institute of Finance, How the Stock Market Works (1988). The rating indicates the creditworthiness of the obligor with respect to a specific transaction. The ratings are based, in varying degrees, on the likelihood of default (i.e., the capacity and willingness of the obligor as to the timely payment of interest and repayment of principal in accordance with the terms of the obligations), the nature of and provisions of the obligation; the protection afforded by, and relative position of, the obligation in the event of bankruptcy, reorganization, or other arrangement under the laws of bankruptcy and other laws affecting creditors rights. S&P Credit Overview International (1984).

[16] GSCC requires that the ratings be issued by S&P or by Moody's.

[17] GSCC will not accept a letter of credit unless it is readily acceptable for pledge under its pledge agreement with The Bank of New York ("BONY").

[18] A "haircut" is the amount by which a security is discounted in determining its value as collateral.

[19] E.g., a letter of credit with a stated value of $100,000 will be valued by GSCC at $99,000 (i.e., a 1% haircut) if the letter may be readily pledged for at least 95% of its stated value, $95,000. If the letter of credit may be pledged for only $89,000, GSCC will allow the letter to secure $89,000 of the member's required clearing fund deposit or forward mark allocation payment.

[20] During the three years that GSCC has been providing netting services and requiring margin from its netting members, letters of credit have remained a relatively small portion of the total clearing fund; normally, the level of letters of credit has been between one-fifth to one-fourth of the total value of the clearing fund.

[21] Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Ester Saverson, Jr., Branch Chief, Division Commission (April 27, 1992).

member's daily clearing fund requirements based on a period that is shorter than 20 business days. In addition, the proposed rule change gives GSCC the authority to suspend, for a definite or indefinite period, the application of certain or all of such offsets between a clearing member's net deliver and receive obligations.[22]

GSCC intends to use this discretion to increase member clearing fund requirements over relatively short periods in order to ensure adequate risk protection during periods of market stress. The proposed rule change allows GSCC to increase the required margin deposit in times of relatively high market volatility or relatively high market volume. GSCC will implement these measures only upon notice to, and with the concurrence of, GSCC's Membership and Standards Committee.

2. Scope of Eligible Collateral

Currently, only Treasury securities with a remaining maturity of one year or less are eligible Treasury securities for deposit as clearing fund collateral. The Proposed rule change makes all Treasury bills and coupon bearing Treasury notes and bonds eligible as clearing fund collateral. GSCC will not make STRIPS[23] eligible as clearing fund collateral. GSCC will impose a "haircut" on Treasury securities with remaining maturities of more than one year for purposes of determining the value of the securities as clearing fund collateral. Treasury securities with a remaining maturity of 10 years or less will receive a 3% haircut, and Treasury securities with a remaining maturity of over 10 years will receive a 5% haircut.

3. Earlier Time Period to Satisfy Deficiency in Required Margin Deposits

Currently, there are three conditions that may give rise to GSCC requesting that a member make an additional deposit to the clearing fund to make up a deficiency. GSCC will call for additional clearing fund collateral if: (1) There is a monthly call for any clearing fund deficit amount; (2) a member's required clearing fund deposit level is 110% or more of the value of the member's deposits to the clearing fund as of a particular day; (3) a member's current day's required clearing fund deposit level exceeds by more than either 25% or $250,000 the value of its clearing fund collateral. In the first and second scenario, the deficiency will have to be made up within three business days. In the third scenario, the deficiency will have to be satisfied the same day the call is made.

The proposal modifies the current call for additional deposits by eliminating the additional deposit requirement when a member's clearing fund deposit level is 110% or more of the value of the member's required deposits in the three-business-day period to satisfy a deficiency call. In effect, the proposal requires additional clearing fund collateral when the member's current day's required clearing fund deposit level exceeds by more than either 25% or $250,000 the value of its clearing fund collateral and requires the member to satisfy any call for an additional deposit on a same-day basis.[24]

Generally, GSCC issues notice of an additional required deposit between 9:30 a.m. and 10 a.m.[25] Under the proposal, GSCC requires deposits to be made by the later of 12 p.m. or two hours after the deficiency notice is issued. If the deficiency notice is not issued until two hours or less before the close of the Fedwire on that day, the member will have until the designated time for payment of funds-only settlement amounts to GSCC on the following day to make the additional deposit (i.e., 9 a.m.).

4. Earlier Payment of Funds-Only Obligations

Currently, members are required to make funds-only payments by 10 a.m. on settlement day.[26] Under the proposed rule change, GSCC will move the deadline for members to make funds-only payments to GSCC to 9 a.m. on settlement day. GSCC will retain the current deadline for those members whose principal place of business is in a different time zone. GSCC will continue to make funds payments to all members in a funds-only credit position by 11 .m. on settlement day.

5. Correlate Quarterly Returns of Excess Collateral With Refunding Periods

Currently, excess clearing fund collateral is returned at the end of each quarter or on a case-by-case basis. GSCC has followed this procedure to correlate the return of excess clearing fund collateral with members' clearing fund requirements which typically decrease after the refunding has settled.

The proposal allows GSCC to calculate the amount of excess collateral available for return on the second business day after each quarterly refunding issue date. At the time GSCC notifies members of the amount of excess collateral, GSCC encourages members to maintain an excess amount of collateral of 25% or $1 million. By maintaining a "cushion," members will bridge the readjustment period after a refunding and will help GSCC to minimize the number of calls for additional collateral.[27]

III. Discussion

The Commission believes that GSCC's proposed modifications to its margin and funds collection processes are consistent with the requirements of the Act. In particular, the Commission believes the proposed rule change is consistent with sections 17A(b)(A) and (F).[28] These sections require that a clearing agency be so organized and that its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody or control or for which it is responsible.

For over three years, GSCC has operated a system for settlement of compared trades in U.S. Treasury and agency securities submitted by GSCC members on a next-day basis in same-day funds ("netting system"). GSCC's netting system provides an effective means to reduce a member's settlement obligations, thereby offering a significant reduction in risk to the marketplace. GSCC has also designed a number of safeguards, including marks-to-the-market, securities against payment through the Fedwire, the

[22] The margin amount on a member's net settlement position is calculated using factors (percentages) that are set based on an assessment of historical daily price volatility date. GSCC gives "credit" for offsetting net settlement positions. GSCC establishes "offset classes" for securities of varying maturity, and provides for "disallowance percentages" among those different offset classes in determining a member's net settlement position. Notwithstanding a member's net settlement position, a minimum margin of 50% of the margin amount on the member's current "gross" position is collected.

[23] "STRIPS" is the acronym for Separate Trading of Registered Interest and Principal of Securities, which are book-entry, zero coupon government securities that are direct obligations of the U.S. Treasury or issued by agencies of the U.S. Government.

[24] Few deficiency calls are made pursuant to the monthly call for additional clearing fund collateral because the need to make such deposits is usually satisfied by the requirement to make additional deposits when a member's required fund deposit is 110% above the member's actual deposits or a member's required fund deposit exceeds by more than 25% or $250,000 the member's actual deposits.

[25] In certain cases, such as when the member is on surveillance, GSCC may issue the notice during the business day. Letter from Jeffrey F. Ingber, Associate General Counsel and Assistant Secretary, GSCC, to Sonia Burnett, Attorney, Division, Commission (December 16, 1991).

[26] Government securities transactions generally settle on the day after the trade date.

[27] After a refunding period, a member's clearing fund requirements often drop to a relatively low level, such that if the return of all of the excess collateral is requested, the member could be called for additional collateral prior to or at the time of the return of the "excess amount".

[28] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

clearing fund, forward mark allocations, and a required deposit by interdealer brokers, that are designed to reduce the risk to GSCC and its members associated with netting and settlement. This proposed rule change is designed to enhance GSCC's risk reduction measures and to further reduce the risk associated with GSCC's netting system.

A. Authority to Use GSCC's Price Volatility to Determine Margin

When GSCC's netting system was approved, the Commission found that GSCC's proposed schedule of margin factors was "satisfactory for the start-up of netting * * *."[29] The Commission noted, however, that GSCC needed to develop an automated system to assess, on a daily basis, historical and potential price movements and their implications for margin factors.[30] The proposal allows GSCC to routinely consider its price volatility data base in setting margin requirements.

GSCC's price volatility data base provides GSCC volatility data for certain government securities for which there is very limited third party data available, like zero-coupon government securities. In addition, GSCC's data base allows it to monitor price movements on a daily basis and provides price volatility data that reflects a confidence level of 99%.

In lieu of interdealer closing prices, GSCC uses a system price, a weighted average of trades compared for netting,[31] which may not accurately reflect the interdealer closing price on days when there is substantial intraday price volatility. To minimize this concern, GSCC uses its own price volatility data in connection with data from third party sources. The Commission believes that GSCC's price volatility data base is an important tool and may be the most reliable data base for certain securities like zero-coupon government securities.

B. Changes to Treatment of Forward Positions In Clearing Fund Formula

In the release announcing standards for the registration of clearing agencies,[32] the Division stated that clearing agencies should establish an appropriate level of clearing fund contribution based on, among other things, its assessment of the risks to which it i9s subject.[33] In order to help minimize the risk associated with its netting system, GSCC's proposal includes the 20-day weighted average of member's forward positions in the calculation of the member's required deposit to the clearing fund on an ongoing basis and removes the 75% limitation on the collection of forward mark allocations.

Initially, the settlement of forward positions was on a regular occurrence and because of its concern about possible reduced liquidity for participants, GSCC included the forward positions in the 20-day weighted average only on the day those positions settled. Forward positions are now netted and settled on a more frequent basis. GSCC can now net (and guarantee) when-issued trades that have been executed on the basis of the market yield ("yield-based trades"), prior to the U.S. Treasury auction.[34]

Because forward positions are included in GSCC's netting and settlement process on a more frequent basis, the Commission believes that it is appropriate to factor forward net settlement positions into the 20-day average. This method of determining a member's clearing fund deposit provides better protection against the risk posed to GSCC by netting forward activity on an ongoing basis.

GSCC believes including large net settlement positions that do not occur on an ongoing basis, e.g., quarterly refundings, distort the risk posed to GSCC and its members and will impede liquidity. The Commission is concerned whether GSCC's clearing fund is sufficient to cover additional risk of forward-settling trades. Therefore, GSCC has agreed to provide the Commission with a written report within 21 days after having excluded specific CUSIPs from the calculation of the 20-day average for forward net settlement positions. The report will discuss: (1) The effect the exclusions had on its members with the five largest positions; and (2) the impact the exclusions had on the clearing fund. Notwithstanding the Commission's approval of this portion of GSCC proposed rule change, the Commission will revisit this issue and will determine whether or not GSCC should continue to exclude certain forward-settling trades from the 20-day average.

Similarly, the Commission believes it is appropriate to raise the 75% limitation on the collection of the forward mark allocation to provide GSCC sufficient liquidity to meet its payment and delivery obligations. The collection of the entire amount of the member's forward mark allocation should not unnecessarily drain the member's liquidity. Unless the debit marks of the members with the five largest debit marks exceed 75% of the total mark, the forward mark allocation to each member would not exceed 75% of that member's debit mark. In addition, GSCC does not include the forward mark allocation in the funds-only portion of the clearing fund formula until the day the forward positions settle. Instead, GSCC separately calculates and collects the forward mark allocation daily, from the time the forward position is netted until settlement. The Commission believes that the inclusion of forward net settlement positions into the 20-day average calculation for the securities net settlement component of the clearing fund and the ability of collect more of the forward mark allocation promote the safeguarding of securities and funds which are in GSCC's custody or under GSCC's control consistent with section 17A of the Act.

C. Letter of Credit Standards

GSCC's proposal helps to ensure that letters of credit used to satisfy a member's required clearing fund deposit and forward mark allocation payment are issued by sufficiently creditworthy and liquid financial institutions to maintain the clearing fund's creditworthiness and liquidity. The clearing fund helps to assure that GSCC will be able to meet its obligations, including trade netting guarantees, on a timely basis even if more than one member defaults on its obligations to GSCC.

The "$750 million equity/top three short-term obligations" rating standard would ensure that only a domestic bank that is among roughly the 30 largest banks in the United States and that has a strong short-term obligations rating would be eligible to be approved as a letter of credit issuer. The alternative "$300 million equity/top short-term

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[29] Securities Exchange Act Release No. 27006, *supra* note 5.

[30] *Id.*

[31] The system price is the par-weighted average of all compared trades in each issue on that date, excluding trades with suspect prices. Because the system price is an average, GSCC also calculates a trade adjustment payment, or "TAP" that is the difference between the system price and the contract price. Each business day, each member must pay or receive a net debit TAP or net credit TAP.

[32] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standard Release").

[33] The Act does not require clearing agencies to establish and maintain clearing funds; however, the Standards Release counsels that "it is appropriate for a clearing agency to establish by rule an appropriate level of clearing fund contributions based on, among other things, its assessment of the risks to which it is subject." Clearing funds may provide, among other things, a defense against financial loss due to participant defaults; a ready source of liquid funds in that event; and a vehicle to facilitate risk mutualization among participants. *Id.*

[34] Securities Exchange Act Release No. 31820 (February 11, 1993), 58 FR 8072. GSCC has also included in its netting system zero-coupon securities. Securities Exchange Act Release No. 33239, *supra* note 5.

obligations rating" would allow roughly the 100 largest banks in the United States with a top short-term obligations rating to be eligible to be approved as a letter of credit issuer.

At least 80% of the value of a letter of credit must be readily available to be pledged under GSCC's line of credit arrangement, currently with BONY. In addition, the proposal imposes higher haircuts on a letter of credit in which at least 95% of the value of the letter of credit is not readily available to be pledged. The Commission believes that requiring that a letter of credit be readily pledgeable and that the collateral value of a letter of credit be tied to the amount that is readily available for pledge will further enhance the liquidity benefits provided by GSCC's line of credit arrangement.

The Commission believes that GSCC's proposal does not unfairly discriminate among its clearing members in requiring these new standards for issuers of letters of credit. The new issuer standards will help to ensure the creditworthiness and liquidity of issuing banks, without unduly limiting the choice of banks which members may use to issue letters of credit on their behalf. By requiring both minimum shareholders' equity and minimum credit ratings, these new standards avoid the potential problem of requiring only one of these criteria for approval as the prior standards did.

D. Other Changes to GSCC's Clearing Fund

GSCC proposes a number of changes that will give it the flexibility to manage its financial exposure more effectively. GSCC's rules would allow it to increase clearing fund requirements during times of market stress. The proposal grants GSCC the ability to suspend or revoke the applicability of certain or all offsets between a clearing member's net deliver and receive obligation. GSCC also may shorten the 20-day average for calculating the securities net settlement component of the clearing fund. The Commission believes flexibility is needed to manage financial exposure during market stress, but the discretion to make changes that will substantially affect clearing agency participants' rights or that may impose significant burden or cost on those participants should be exercised prudently and in a manner that minimizes those consequences for participants. Thus, the Commission believes it is appropriate for GSCC to consult the Commission prior to involving such discretionary rules.[35]

[35] GSCC agrees that, to the extent practicable, it will consult with the Commission prior to: (1) Suspending any of the offsets; (2) reducing the 20-day average period used to calculate required clearing fund deposits; or (3) imposing higher required fund deposits under GSCC Rule 4, Section 2. GSCC will follow up any oral notification with a written notification and will continue to consult with the Commission during the time that GSCC exercises any of the above-mentioned provisions of GSCC Rule 4, Section 2. GSCC also will make any necessary Commission filing under section 19(b) of the Act. Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Ester Saverson, Jr., Branch Chief, Division, Commission (April 27, 1992).

GSCC's proposal concerning the expansion of the type of government securities eligible for deposit as clearing fund collateral attempts to balance collateral protection and the burden and cost imposed on members. Many GSCC members already have such securities in their inventories. Therefore the Commission believes it is reasonable to allow GSCC members to use these government securities as collateral with an appropriate haircut, rather than requiring them to put up cash, to borrow or purchase government securities of maturities of one year or less, or to secure a letter of credit, all of which may be more costly to some members.

GSCC's proposal to change the time for the payment, the deposit, and the return of excess margin provide greater management of GSCC's financial exposure. The earlier deadline for the payment of funds-only settlement obligations and the requirement that all deficiencies in the clearing fund be satisfied on the day notification is received will provide GSCC greater assurance that GSCC will have on deposit from each netting member cash or other collateral sufficient to satisfy a loss to GSCC as a result of that member's default and close out of settlement positions. GSCC's coordination of the return of collateral and encouragement to members to maintain a cushion above their required clearing fund deposits should provide GSCC with greater flexibility in managing its financial exposure.

The Commission recognizes that risk reduction methods, such as clearing fund deposits, forward mark allocations, margin, and standards for collateral, including letter of credit standards, should provide an adequate level of protection in light of market conditions, while taking into account the overall risk of an entire position. A clearing agency's rules also should be flexible enough to provide increased protection in times of market stress and high market volatility without imposing substantial liquidity burdens on participants. The Commission believes that GSCC's expanded authority provides it with adequate risk reduction measures and with additional protection during market stress and high market volatility, thereby appropriately balancing financial exposure and the imposition of added business cost on GSCC's membership.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–GSCC–91–04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29360 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33247; File No. SR–OCC–93–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to the Processing of Late Exercise Requests

November 24, 1993.

On February 17, 1993, The Options Clearing Corporation ("OCC") submitted a proposed rule change (File No. SR–OCC–93–02) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] concerning the processing of late exercise requests. Notice of the proposal appeared in the **Federal Register** on March 17, 1993, to solicit comment from interested persons.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The proposed rule change amends the OCC late exercise fee schedule cut-off times to advance the first deadline from 10 p.m. to 9 p.m. in OCC's daily processing cycle when combined reported trade volume for all participant exchanges is 850,000 contracts or fewer.[3] This late exercise processing deadline will remain at 10 p.m. on any day when combined reported trade

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 31980 (March 11, 1993), 58 FR 14457

[3] All times in the order are Central Time.

volume for all participant exchanges exceeds 850,000 contracts.

A. Current Late Exercise Processing Standards

On July 1, 1991, the Commission approved OCC's proposal to amend section (e) of OCC Rule 801 (Exercise of Options).[4] As amended at that time, Rule 801(e) provides OCC with the authority to permit clearing members to file, revoke, or modify exercise notices after 7 p.m. for the purpose of correcting bona fide errors. Authority to accept or reject such late instructions is vested in the OCC's Chairman or President or any delegate of OCC's Chairman or President.

Once a late exercise notice is accepted, Rule 801(e) requires the clearing member that submits such notice to pay a late filing fee[5] and to explain in writing within two business days the circumstances that led to the submission of the late notice. The fees for late notices are currently imposed on a schedule that increases the further into the processing cycle the notice is received.

The purpose of the July 1, 1991 amendment of Rule 801(e) was to provide an incentive for clearing members to reduce the number of clearing member errors relating to the processing of exercise notices. The earlier that late exercises are submitted, the easier and less costly it is for OCC to process these exercises. Late exercise notices submitted prior to the start of OCC's critical processing can be accommodated through standard processing or through restore and recovery mechanisms. Late exercises submitted after the start of critical processing, however, require the use of supplemental assignment procedures, which require special handling by both OCC and the assigned clearing member and is manually intensive and costly. As post-critical processing is not automated, settlement must be effected in a broker-to-broker mode with the assigned member incurring additional costs. As a result of this disparity in cost and effort relating to late exercise notices, OCC's July 1, 1991, amendment modified the fee schedule in Rule 801(e) to differentiate between exercise notices received at various stages prior to the start of critical processing and those received afterwards. This provided a financial incentive for clearing members to identify errors earlier in OCC's processing cycle.

From the time the Commission approved the July 1, 1991 amendment, OCC has processed only three requests for late exercise notices, and all three received prior to 10 p.m. This represents a significant improvement when compared to the number of late exercise notices received in the years prior to the amendment.[6] The virtual elimination of submissions after the start of critical processing prompted OCC to further analyze its late exercise rules. OCC has concluded that the reduction in clearing member late submission requests has been the result of three factors: (1) Clearing member implementation of exercise notice versus trade input reconciliations; (2) the implementation of intraday trade comparison systems by participant exchanges; and (3) reduced trading volumes.

B. Proposal to Amend Late Exercise Processing Schedule

OCC now faces a problem in that it is typically ready to process exercises by 9 p.m., but it is required to wait until 10 p.m. due to the possibility of receiving a late exercise notice. On most processing days when trading volume is not particularly heavy, this unnecessarily inconveniences OCC staff. Based on a review of participant exchange cut-off-time procedures for submission of trade data and distribution times for first pass reports, OCC has determined that the trend of participant exchanges to distribute trade comparison reports earlier is generally a function of reduced trading volume. On those days when transaction volume is exceptionally heavy, OCC has found that the participant exchanges have informal procedures in place that afford such exchanges additional time to process transactions.

Based on this review, OCC has concluded that moving the late exercise notice cut-off time associated with the $500 fee from 10 p.m. to 9 p.m. and correspondingly moving the beginning of the late exercise notices time frame associated with the $2,000 fee from 10:01 p.m. to 9:01 p.m. is feasible except under the most extreme, high volume conditions. The participant exchange that takes the most amount of time to process trade data normally distributes first pass reports by 8 p.m. even under high volume conditions. This would leave members adequate time for reconciliation prior to 9 p.m. on most business days.

The proposed rule change amends OCC's late exercise fee schedule cut-off times to advance the deadline associated with the $500 fee from 10 p.m. to 9 p.m. when combined reported trade volume for all participant exchanges is 850,000 contracts or fewer. As the participant exchanges may require additional time to submit trade reports to OCC when volume is particularly heavy, this late exercise notice processing deadline will remain 10 p.m. on any day when combined reported trade volume for all participant exchanges exceeds 850,000 contracts. Consequently, the beginning of the time frame associated with the $2,000 fee will now be 9:01 p.m. when combined reported trading volume is 850,000 contracts or fewer and 10:01 p.m. when reported trading volume exceeds 850,000 contracts.

II. Discussion

The Commission believes that the proposal is consistent with the Act and in particular section 17A of the Act.[7] Sections 17A(b)(3) (A) and (F) of the Act[8] require that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of the clearing agency or for which it is responsible. This requirement clearly authorizes a clearing agency to deal effectively with the problem of late exercise notices and their potentially disruptive effects on post-trade processing.[9]

The graduated fee structure will be continued. The proposal provides OCC with flexibility to adjust its late exercise procedures as needed in light of daily trading volume. The proposal also recognizes the comparative ease with which OCC can process late exercise notices when they are received early in the processing cycle and the increasing difficulty of handing such notices as they are received later in the processing

[4] Securities Exchange Act Release No. 29390 (July 1, 1991), 56 FR 31454 (File No. SR–OCC–90–03) (order approving late exercise notices).

[5] The current fees for filing late exercise notices are: $500 for any late instruction accepted between 7 p.m. and 10 p.m., $2,000 for any late instruction accepted between 10:01 p.m. and the start of critical processing, and $10,000 per line item listed on the exercise notice accepted after the start of critical processing.

The term critical processing means the main portion of OCC processing that follows the preliminary processing and which once started cannot be interrupted for the addition of new data or for any other cause without shutting down the entire processing run and restarting the run from the beginning. Interrupting critical processing results in increased OCC expenses and delays in completing daily processing. OCC's critical processing typically begins between 10 p.m. and midnight.

[6] In the two years prior to the July 1, 1991 amendment to OCC Rule 801(e), OCC processed twenty-one notices, seven of which are received after the completion of critical processing.

[7] 15 U.S.C. 78q–1 (1988).

[8] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[9] OCC members are reminded that, where applicable, they are still subject to exchange rules governing options exercise cut-off times (e.g., Philadelphia Stock Exchange Rule No. 1042).

cycle, particularly if they are received after OCC's critical processing has begun, and sets fees accordingly.

There were no comments on this proposal. The Commission observes that OCC received only three late exercise requests in the twenty month period from July 1991 through February 1993. Moreover, those three requests were submitted prior to the commencement of OCC's critical processing and, therefore, resulted in comparatively modest late filing fees. Accordingly, the Commission believes that the improved efficiencies to OCC and to the marketplace that are embodied in this proposal outweight any inconvenience that might accrue to OCC's clearing members.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act,[10] and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[11] that the above-mentioned proposed rule change (File No. SR–OCC–93–02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29423 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33246; International Series Release No. 615; File No. SR–Phlx–93–42]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Foreign Currency Options Trading Hours

November 24, 1993.

On October 22, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission (Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adjust its trading hours for foreign currency options ("FCOs") such that (1) all FCOs, except FCOs on the Canadian Dollar, will trade from 1:30 a.m. Eastern Standard Time ("EST") until 2:30 p.m. EST each business day, and (2) FCOs on the Canadian Dollar will trade from 7 a.m. until 2:30 p.m. EST each business day. Notice of the proposal appeared in the **Federal Register** on November 2, 1993.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

The Phlx's FCO trading hours have historically commenced at 6 p.m. EST each Sunday through Thursday and terminated at 2:30 p.m. EST each respective Monday through Friday.[4] Earlier this year the Exchange suspended trading from 6 p.m. to 3 a.m. EST for the British pound and British pound/Deutsche mark cross-rate FCOs due to lack of trading interest and volume in that session for these contracts.[5] In fact, the Exchange has represented that during the past year, the trading volume in all FCO contracts during the 6 p.m. to 1:30 a.m. EST trading hours has amounted to less than 5% of the total FCO daily trading volume. As a result, the Exchange believes that the limited trading interest during the time period proposed to be suspended can be adequately handled and executed from 1:30 a.m. to 2:30 p.m. EST for all FCOs other than FCOs on the Canadian dollar, and from 7 a.m. to 2:30 p.m. EST for Canadian dollar FCO contracts.

The Exchange believes that this change will ease the significant staffing burdens of current registered FCO specialist units as well as floor brokerage units and registered option trader firms who must have staff present on the trading floor during this time period when there is minimal FCO trading activity. Additionally, the Phlx believes, suspension of these trading hours will reduce the extraordinary expenses associated with paying staff and operating trading floor and support systems during these trading hours.

The proposal would also delete Commentary .16 to Phlx Rule 1014 which contains references to the "evening trading session" as it relates to the application of the "dual trading" prohibition on participants in Phlx FCOs. Additionally, the Phlx has represented that it will consider reinstating the evening FCO trading hours for any or all of its FCO contracts if marketplace demand should so dictate.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5)[6] in that the proposal is designed to foster just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. Specifically, given the realities of the global foreign currency market, which according to the Exchange, historically is marked by (1) reduced or declining liquidity for FCO contracts during the Exchange's current trading hours from 6 p.m. to 1:30 a.m. EST, and (2) virtually no demand for Canadian dollar FCOs before 7 a.m. EST, the Commission believes that the proposed rule change will not have a material impact on market participants while, at the same time, will help to reduce operational burdens on current registered FCO specialist units as well as floor brokerage units and registered option trader firms. In addition, the Exchange will be open for trading FCOs (other than Canadian dollar FCOs) from 1:30 a.m. to 2:30 p.m. EST, and Canadian dollar FCOs from 7 a.m. to 2:30 p.m. EST, so that investors will have the ability to access to Exchange's FCO market to trade all of the Exchange's FCO contracts.[7] Moreover, the Commission notes that the Exchange has issued notices to its membership advising them of the proposed changes, and will issue another notice to its membership upon approval of the proposed rule change,[8] thereby avoiding any possible investor confusion. Based on the above, the Commission finds that the Exchange's proposal to change the FCO trading for all of its FCO contracts as described herein is consistent with

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[10] 15 U.S.C. 78q–1 (1988).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 33115 (October 29, 1993), 58 FR 58584.

[4] Currently, contracts on the Australian dollar, Deutsche mark, Japanese yen, Swiss franc, and Deutsche mark/Japanese yen cross-rate FCOs trade from 6 p.m. to 10 p.m. EST, and from 11:30 p.m. to 2:30 p.m. EST. Contracts on the British pound, Canadian dollar, European Currency Unit, French franc, and British pound/Deutsche mark cross-rate FCOs trade from 3 a.m. to 2:30 p.m. EST.

[5] See Securities Exchange Act Release No. 32545 (June 29, 1993), 58 FR 36239.

[6] U.S.C. 78f(b)(5) (1988).

[7] Indeed, the Phlx has represented to the Commission that should investor and market needs warrant, it will consider adding additional FCO trading hours.

[8] See Circular No. 93–184, from Murray Ross, Secretary, Phlx, to members, dated November 1, 1993. The Phlx has represented that upon approval of this proposal, it will provide at least ten days advance notice, in the form approved by the Commission, prior to adjustment of the trading hours as herein approved. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Attorney, Branch of Derivatives Regulation, Division of Market Regulation, Commission, dated November 9, 1993.

just and equitable principles of trade and the protection of investors.[9]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal will allow the Exchange to notify FCO specialist units, member firms, and customers of the schedule changes, thus permitting the Exchange to ease, as soon as possible, the operational burdens resulting from the low trading activity of its FCO contracts during the hours of 6 p.m. EST to 1:30 a.m. EST for all FCO contracts other than options on the Canadian dollar, and during the hours of 6 p.m. EST to 7 a.m. EST for FCOs on the Canadian dollar. Additionally, the Commission notes that the proposal was published for the full 21 day comment period and no comments were received.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–93–42) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29359 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19900; 813–120]

AEGON nv, et al.; Application for Exemption

November 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: AEGON NV ("AEGON"), AEGON USA, Inc. ("AEGON USA"), Massachusetts Fidelity Trust Company (the "Trustee"), and AEGON USA Producers' Stock Purchase Plan (the "Plan").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(13) and 6(b), and pursuant to section 6(b) from all provisions of the Act and the rules thereunder other than sections 7, 8(a), 9, (except as described herein), 17 except as described herein), 21, 30(a) (to the extent that it requires distribution of audited annual reports), and 33 through 53, and the rules thereunder.

SUMMARY OF APPLICATION: Applicants seeks a conditional order under section 6(c) granting relief from sections 2(a)(13) and 6(b) to permit the Plan to be treated as an employee's security company, and pursuant to section 6(b) exempting the Plan from all provisions of the Act and the rules thereunder other than sections 7, 8(a), 9 (except as described herein), 17 (except as described herein), 21, 30(a) (to the extent that it requires distribution of audited annual reports), and 33 through 52, and the rules thereunder.

FILING DATE: The application was filed on December 17, 1992 and amended on May 10, 1993, September 7, 1993, November 17, 1993, and November 23, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 4333 Edgewood Road NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. AEGON, a Netherlands corporation, is an international insurance group. AEGON is a reporting company under the Securities Exchange Act of 1934 and its securities are traded on the New York Stock Exchange and stock exchanges in Amsterdam, Tokyo, London, Basel, Geneva, and Zurich. As of December 31, 1992, AEGON had outstanding 99,003,634 shares of common stock (the "Common Stock"). AEGON operates in the U.S. through AEGON USA.

2. AEGON USA, an Iowa corporation, is a holding company and an indirect wholly-owned subsidiary of AEGON. The Trustee is an Iowa state chartered Trust company and a wholly-owned subsidiary of AEGON USA. The principal business of AEGON USA is the issuance and sale of insurance products through its subsidiaries. Some of the subsidiaries operate on a general agency plan whereby agents or corporations are engaged to enter into transactions on behalf of the subsidiary. Each of these agents is an independent contractor and not a common law employee of AEGON USA or its subsidiaries.

3. AEGON proposes to establish the Plan as an employer-subsidized voluntary stock purchase plan for eligible participants of any subsidiary, division, or company controlled by AEGON USA ("Participating Companies") that adopt the Plan. Eligible participants in the Plan include individuals who represent a Participating Company under a sales or agency contract or appointment and individuals from corporations that perform services for a Participating Company under a sales or agency contract. Under state insurance laws, an individual selling insurance on behalf of a Participating Company is considered an agent of the Participating Company. Eligible participants must have and maintain an effective life insurance license, appointment and/or contract with a Participating Company and must meet the specific eligibility requirements determined by a Participating Company. The eligibility requirements are substantially different for each Participating Company.

4. The Plan will consist of two parts: a nonqualified deferred compensation plan ("NQDC") to accumulate contributions by the Participating Companies, and a grantor trust (the "Trust") to receive the contributions from the participants. Participation in the Plan will be entirely voluntary. Participants in the Plan will make periodic contributions to the Plan by

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[9] The Commission recognizes that the regular business hours for the Far East market occur during the 6 p.m. EST to 1:30 a.m. EST trading session. Nevertheless, because the Phlx has represented that the trading volume in its FCO contracts is extremely limited during this session, and the trading volume for Canadian dollar contracts is extremely limited prior to 7 a.m. EST, we believe, given the staffing burden on registered FCO specialist units, floor brokerage units, and registered option trader firms, it is permissible and within the Phlx's business judgment to alter its trading hours as proposed. Should the Exchange opt to alter its FCO trading hours in the future, the Commission expects the Phlx to submit a rule filing pursuant to Section 19 (b) of the Act.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1992).

authorizing the automatic deduction of certain amounts from their commission checks. In no event may a participant contribute in excess of 25% of the participant's total commissions in any Plan year. The amount of the participants' contribution will be retained by AEGON to purchase Common Stock on the participant's behalf for deposit in the Trust. A participant's interest in the Trust will be 100% vested at all times.

5. AEGON, either itself or through a Participating Company, will match each participant's contribution to the Trust to some extent through quarterly contributions to the NQDC. The exact manner and rate of matching contributions will be determined separately and independently for each Participating Company. A participant's interest in the NQDC will be subject to a 10 year vesting period, vesting at the rate of 10% for each year of participation. Upon vesting of contributions made on behalf of a participant to the NQDC by AEGON, an equivalent amount of Common Stock will be deposited into the Trust.

6. Ownership interest in the assets of the Trust will be represented by shares. One share of the Trust will be equivalent to one share of Common Stock. Current dividends or other income generated by Trust assets will be, at the election of each participant, paid in cash to a reinvestment agent to purchase additional Common Stock to be deposited in the Trust on the participant's behalf or paid in cash to the participant. Any such purchases of additional Common Stock will be made on the open market and will not be made from AEGON, AEGON USA, the Trustee, any affiliated persons of the Trust, or affiliated persons of affiliated persons of the Trust.

7. Any voting rights in connection with the shares of Common Stock represented by a participant's Trust shares will be passed through to the Participant's. The Trustee will distribute to the participants any proxy materials, reports, and other related materials with regard to any voting issues and will solicit voting instructions from the participants by sending written requests for instructions. The Trustee will vote all shares of Common Stock according to instructions given by the participants, and as to shares for which no timely instructions have been received, the Trustee will vote those shares in proportion to the voting instructions that have been received from the other participants.

8. Each participant will receive at least quarterly a statement setting forth the total amount contributed to the Trust for such participant, the number of Trust shares held for the participant by the Trustee, the current value of a Trust share, and the current value of the participant's interest in the Trust. This statement also will include information regarding the participant's interest in the NQDC. Audited financial statements of the Trust also will be prepared and distributed to the participants no less frequently than annually.

9. Trust shares owned by a participant will be nonassignable and not transferable in whole or in part, except that a limited right of assignment is available in the case of participants who are compensated on an advance commission basis and are required to provide security for this indebtedness. If a participant dies or becomes permanently disabled, the Trust shares owned by the participants as of the most recent month-end valuation date will be distributed in total in the form of Common Stock to the participant, or his or her beneficiaries.

10. All contributions to the Trust are to be in the form of Common Stock. Upon receipt of each participant's contribution, AEGON generally will purchase common stock on behalf of the participants on the open-market through a designated broker or depository. AEGON, however, also may issue Common Stock directly to the Trust. Any Common Stock issued directly to the Trust will be issued at the last reported sale price on the New York Stock Exchange on the business day next succeeding the date on which a determination was made to issue Common Stock directly to the Trust. A blackout period will be established by AEGON during which time AEGON and its affiliates will be precluded from purchasing Common Stock if it is determined that AEGON has any material information precluding its purchase of Common Stock.

11. At any time a participant may redeem all or a portion of his or her Trust shares by giving notice in writing to the Trustee. Any distributions made upon redemption of Trust shares will be made in the form of Common Stock with amounts representing fractional shares paid in cash. Upon redemption of all of his or her Trust shares, a participant will be ineligible to participate in the Plan for a period of one year after the date of such redemption. Participants may also make partial redemptions under certain circumstances. Participants who redeem all their Trust shares or who are dismissed with cause by a Participating Company will forfeit any unvested amounts in the NQDC contributed on their behalf.

12. The Trustee will be appointed by AEGON USA to administer the Trust. The Trustee will be responsible for coordinating the various management duties of the Trust, including receiving Common Stock from AEGON for deposit into the trust, recordkeeping, providing quarterly statements, tracking tax bases in the Common Stock, preparing Trust filings, passing on the voting materials to participants, coordinating the transfer of Common Stock into the Trust from the NQDC, and redepositing income and dividends in the form of Common Stock into the Trust on behalf of the participants electing such reinvestment. Applicants intend that the Trustee will be compensated for its services by AEGON USA or the Participating Companies. Any fees for Trustee's services not paid by AEGON USA or the Participating Companies, however, will be paid *pro rata* from the assets of the Trust. In no event will the Trustee's fees and other non-transactional expenses paid out of Trust assets exceed 1% of the average annual net assets of the Trust.

13. Applicants seek an exemption under section 6(c) from sections 2(a)(13) and 6(b) to permit the Plan to be treated as an employee's security company, and pursuant to section 6(b) from all provisions of the Act and the rules thereunder other than sections 7, 8(a), 9 (except as provided herein), 17 (except as provided herein), 21, 30(a) (to the extent that it requires distribution of audited annual reports), and 33 through 53, and the rules thereunder.

14. Applicants propose to comply with section 8(a) by filing a Form N–8A on behalf of the Trust. Applicants intend to register the Common Stock, the Trust Shares, and the NQDC participation interests of AEGON as securities under the Securities Act of 1933. Appropriate disclosure regarding issues such as fees, tax consequences and investment risks incident to participation in the Plan will be disclosed in the prospectus delivered to all participants. In addition, applicants intend to seek relief under certain provisions of the Securities Exchange Act of 1934, including rule 10b–6 and 10b–18 thereunder, to operate the Plan as contemplated.

15. Section 9 provides generally that a person who has been convicted of a felony or misdemeanor or enjoined in connection with securities related misconduct, and affiliated persons of such person, are disqualified from acting as an employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company. Applicants believe that AEGON USA

could be deemed to be the Trust's sponsor/depositor and therefore its employees and affiliated persons, including AEGON would be subject to section 9. Applicants believe that applying section 9 to all affiliated persons of AEGON would be unnecessarily burdensome on both AEGON and the Plan. Applicants will be subject to section 9 to the extent that it applies to officers and directors of AEGON USA, officers, directors, and employees of the Trustees, and such other personnel of AEGON USA or any of its affiliated persons who are involved in the organization and operation of the Trust. AEGON, AEGON USA, and the Trustee, as corporate entities, also will be subject to section 9(b).

16. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other property. Applicants will comply with section 17(a) except to the extent that it applies to direct issuance of Common Stock by AEGON to the Trust.

17. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person in contravention of such rules and regulations as the SEC may prescribe for the purpose of limiting or preventing participation by such companies. Rule 17d–1 was promulgated pursuant to section 17(d) and prohibits most joint transactions unless approved by order of the SEC. Applicants will comply with section 17(d) and rule 17d–1 to the extent that they engage in transactions not specifically described herein. Applicants will comply with the provisions of section 17 regarding commissions charged by affiliated persons of investment companies, except that because the Trust will not have a board of directors, the Trustee will perform the duties of a board of directors required under rule 17e–1(b).

18. Section 17(f) permits a registered investment company to maintain self-custody of its securities and similar investments subject to such rules and regulations as the SEC prescribes for the protection of investors. Rule 17f–2 was promulgated pursuant to section 17(f) and sets forth detailed provisions governing self-custody of investments by a registered investment company. The Trust may be deemed to be subject to rule 17f–2 since the Common Stock will be held in the custody of a trustee that is an affiliated person of AEGON. Applicants agree to comply with rule 17f–2, except that any procedural steps to be taken by the board of directors will instead be taken by the Trustee. Any provisions requiring access persons to be officers or employees of the investment company will be interpreted to refer to the officers and employees of the Trustee. Under rule 17f–2, the Trustee qualifies as a person whose functions and facilities are supervised by state authority. The Common Stock will be physically segregated by the Trustee and will be deposited in a vault or other depository maintained by the Trust. The Common Stock will only be withdrawn in connection with the sale or redemption of such securities. Such securities will be verified by an examination by an independent accountant three times each year, and an accountant's certificate attached to a complete Form N–17f–2 will be transmitted to the SEC.

19. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Applicants will comply fully with the terms of section 17(g) and rule 17g–1 thereunder except that the required fidelity bonds will cover employees and officers of the Trustee (as there are no officers or employees of the Trust). The Trustee will cause the required filings with respect to the form and amount of the bonds to be filed with the SEC as required under the rule. In addition, the Trustee will file with the SEC the required filings within five days after the making of any claim under a fidelity bond.

20. Rule 17j–1 requires a registered investment company to adopt a written code of ethics containing provisions necessary to prevent affiliated persons of such company from engaging in any act or practice which would defraud the company. Pursuant to rule 17j–1(b), the Trustee will adopt a written code of ethics containing provisions reasonably necessary to prevent the officers and employees of the Trustee from engaging in any act, practice, or course of business prohibited by rule 17j–1(a). Applicants will not be subject to the reporting requirements of rule 17j–1(c).

Applicants' Legal Analysis

1. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer or affiliated employers or by former employees of such employers.

2. The participants in the Plan are independent contractors engaged on a general agency basis and are not common law employees of the Participating Companies. Applicants submit that this is due to the customary practice of the insurance industry and is not a distinction that should determine whether the Plan is an employees' security company. The participants occupy a parallel role to that of salaried, common law employees.

3. The legislative history of sections 2(a)(13) and 6(b) recognize that an employees' security company is a labor-related entity that exists primarily to promote the economic welfare of its investors. The Plan exists primarily to promote the economic welfare of the participants. The economic welfare of the participants is directly related to the insurance business of the Participating Companies. As further evidence of this fact, applicants state that they offer other benefit plans to the participants, including educational seminars, medical, life and accidental death and dismemberment plans, and incentive compensation plans.

4. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants seek relief under section 6(c) from sections 2(a)(13) and 6(b) to permit the Plan to be treated as an employees' security company, notwithstanding that the Plan does not meet the strict definition of "employees securities company" in section 2(a)(13).

5. In determining whether a proposed employees' security company exemption is consistent with the protection of investors, section 6(b) directs the SEC to consider, among other things, the form of organization and the capital structure of the company, the persons by whom its securities are owned, the prices at which securities issued by the company are sold and the sales load thereon, the character of the securities in which such proceeds are invested, and any relationship between

the employees' security company and the issuer of the securities it holds.

6. The organization of the Trust in the form of a grant or trust governed by a Trustee whose duties are ministerial in nature protects the participants. Although the Trustee is an affiliated person of AEGON, the Trustee is in a fiduciary relationship to the beneficiaries of the Trust and is under a state law duty to administer the Trust solely in the interest of the beneficiaries. AEGON will not have the ability to exercise any control or influence over the Trust. Moreover, each participant has the possibility of realizing an increase on his or her investment as a result of the matching contributions even without appreciation in the value of the Common Stock.

7. The eligible participants are similarly situated in that they are a designated and limited group who are eligible to enroll in the Plan and have their contributions to the Plan deducted from their Commission checks. The eligible participants already receive regular financial and other information about AEGON USA and are in a position to assess the potential benefits and risks of enrollment in the Plan. Moreover, no other individuals will be able to participate, nor will the Trust shares owned by the participants be transferable or assignable.

8. There are no sales charges to participants in the Plan (other than the related brokerage commissions incurred in connection with the purchase or sale of Common Stock on the open market). No fee will be charged by the Trustee or AEGON USA as an expense for transfer or organization. In general, the Plan will incur few expenses. Taxes, and similar transaction costs will be paid out of Trust assets and allocated based on the current number of Trust shares owned by a participant. Any unpaid Trustee's fee will be paid out of Trust assets.

9. The Trust assets will be primarily Common Stock. Approximately 99 million shares of Common Stock are presently outstanding. According to audited financial information for the year ended December 31, 1992 (in accordance with Dutch accounting principles) AEGON had total assets of approximately $46 billion and total shareholders' equity of approximately $3.5 billion.

10. The relationship between AEGON, AEGON USA, and the Plan protects the interest of the participants. Participation in the Plan is voluntary. AEGON has made a substantial investment in the establishment of the Plan and will make matching contributions for the benefit of the participants. No sales load will be charged to the participants, no fees will inure to the benefit of AEGON or AEGON USA, and the Plan will not be promoted by persons seeking to profit from investment in the Plan.

11. Applicants submit that for the foregoing reasons, the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicants' Conditions

1. Any Common Stock issued directly from AEGON to the Trust will be issued at the last reported sale price on the New York Stock Exchange or other applicable stock exchange on the business day next succeeding the date on which a determination is made to issue such Common Stock.

2. In no event will the Trustee's fee and any other nontransactional expenses exceed 1% of the average annual net assets of the Trust.

3. The Trustee will maintain and preserve permanently, the first 2 years in an easily accessible place, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to each participant. All such accounts, books, and other documents maintained by the Trustee will be subject to examination by the SEC or its staff.

4. The Trustee will record and preserve a description (including the date of issuance and the number and price of shares) of the issuance of Common stock directly to the Trust. All such records will be maintained for the life of the Trust and at least two years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-29357 Filed 11-30-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19904; 812-8616]

Co-operative Bank Investment Fund; Application

November 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Co-operative Bank Investment Fund.

RELEVANT 1940 ACT SECTIONS: Sections 6(c), 13(a), 15(a), 16 (a) and (b), 18(i), 22(d), and 32(a) (2) and (3).

SUMMARY OF APPLICATION: Applicant seeks an amendment order under section 6(c) of the Act exempting applicant from the provisions of sections 13(a0, 15(a), 16 (a) and (b), 18(i), 22(d), and 32(a) (2) and (3) of the Act. The order would amend applicant's existing order by permitting applicant to offer its securities to the Savings Bank Life Insurance Company of Massachusetts.

FILING DATES: The applications was filed on October 13, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 75 Park Plaza, Boston, Massachusetts 02116-3934.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272-7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management company registered under the Act. Applicant was organized pursuant to a special act of the Commonwealth of Massachusetts (the "Enabling Legislation") primarily to provide a mutual fund investment medium to Massachusetts co-operative banks (state-chartered thrift banking institutions).[1] Applicant's business is conducted by a board of directors elected by applicant's incorporators. Applicant's incorporators are the

[1] 1984 Mass. Acts ch. 482.

directors of The Co-operative Central Bank (the "Central Bank"), which is the statutory reserve bank and excess deposit insurer (on deposit amounts in excess of those amounts federally insured) for Massachusetts co-operative banks. Applicant is internally managed and investment decisions are made by authorized officers of applicant, subject to authority delegated by applicant's board of directors.

2. Applicant falls within the definition of a "bank" under Massachusetts law and is subject to the substantial supervision of the Commissioner of Banks of the Commonwealth of Massachusetts (the "Commissioner of Banks"). Such supervisory authority extends, among other things, to supervision of applicant's investment portfolios. In addition, the Commissioner of Banks is required to make periodic examinations of the books, securities, cash, assets, and liabilities, and to ascertain the condition, of all banks under his supervision.

3. Applicant has no capital stock; instead shares of beneficial ownership are issued from time to time by applicant. Such shares do not provide holders with any voting rights. Each share is equal in every respect to every other share, except that if applicant's board of directors establishes distinct investment funds, as it is authorized to do, it may authorize shares to be issued in distinct classes and each share within each such class will be equal in every respect to every other share of that class.

4. Applicant offers and sells its securities in reliance on an exemption from registration under the Securities Act of 1933 (the "Securities Act") pursuant to section 4(2) of the Securities Act and regulation D thereunder. After issuance, applicant's securities may not be transferred by eligible purchasers of such securities to any person other than another eligible investor.

5. The Enabling Legislation permitted Massachusetts co-operative banks, the Co-operative Banks Employees Retirement Association (a retirement association organized under Massachusetts law), and Massachusetts savings to invest in applicant. In 1986, the Enabling Legislation was amended, permitting applicant, among other things, to offer its securities to the Central Bank Reserve Fund, the Massachusetts League of Community Banks, and the National Consumer Co-operative Bank.

6. The Commission granted applicant relief from certain provisions of the Act in 1985[2] and again in 1986[3] to permit applicants securities to be sold to the entities referred to in the Enabling Legislation and the 1986 amendment thereto.

7. In 1990 and 1991, the Enabling Legislation was further amended (the "1990 and 1991 Amendments") to authorize applicant to offer its securities to certain additional investors.[4] Consistent with the 1990 and 1991 Amendments, the Commission granted applicant relief in 1992[5] from certain provisions of the Act to permit applicant's securities to be sold to any trust company incorporated in Massachusetts, federally chartered savings banks and savings and loan associations with their principal place of business in Massachusetts, and directly or indirectly wholly-owned subsidiaries of entities that have received Commission authorization to invest in applicant.[6]

8. On August 16, 1993, the Massachusetts legislature amended the Enabling Legislation (the "1993 Legislation") to allow the Savings Bank Life Insurance Company of Massachusetts ("SBLIC") to invest in applicant.[7] Consistent with the 1993 Legislation, and in addition to the eligible investors specified in the Prior Orders, applicant proposes to offer its securities to SBLIC.[8]

9. SBLIC is a stock life insurance company established in 1992 by a specific Massachusetts statute to provide low cost insurance products. Its shares may be held only by Massachusetts savings banks, any such bank which has converted to a federally chartered savings bank, and the parent holding company of such banks. SBLIC is the successor to a mutually owned and operated system of Savings Bank Life Insurance originally established by the Massachusetts legislature in the early 1900's to provide reasonably priced life insurance through Massachusetts savings banks. SBLIC was established to assume the management and operational functions of this prior structure. SBLIC is regulated through the office of the Massachusetts Commissioner of Insurance.

Application's Legal Analysis

1. Applicant seeks to amend the 1992 Order granting relief from the provisions of sections 13(a), 15(a), 16(a), and (b), 18(i), 22(d), and 32(a)(2) and (3) of the Act so that it may sell its securities to SBLIC.

2. Applicant asserts that none of the policy bases underlying the granting of the Prior Orders are substantially affected by the 1993 Legislation. Applicant will offer and sell its securities to SBLIC, as well as to investors eligible to purchase shares under the Prior Orders. Except for the proposed new offeree, applicant's activities essentially are unchanged from its activities as outlined in the Prior Orders.

3. Section 18(i) of the Act requires that every share of stock issued by a management company be a "voting stock." Section 2(a)(42) defines "voting security" to means a security entitling the owner or holder thereof to vote for the election of directors of the company. Sections 13(a), 15(a), 16(a) and (b), and 32(a)(2) and (3) also provide various voting rights to shareholders of registered investment companies. The Enabling Legislation, as amended, does not provide voting rights to the holders of the shares of beneficial interests issued by applicant. Instead, all such rights are exercised by the incorporators of applicant, who are the directors of the Central Bank. Applicant argues that this arrangement alleviates the danger that a few large banks might obtain complete control of applicant through large investments and consequently dominate its board of directors. Applicant asserts that, in view of the extent of the Commissioner of Banks' supervisory powers, the form of applicant's organization, the nature of SBLIC and the limits of its investments in applicant, the identity of the incorporators, and the provisions in applicant's charter, an exemption from sections 13(a), 15(a), 16 (a) and (b), 18(i), and 32(a) (2) and (3) is justified.

4. Section 22(d) of the Act requires that securities sold by a registered investment company must be sold through a principal underwriter or at a

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[2] Investment Company Act Release Nos. 14732 (Sept. 20, 1985) (notice) and 14760 (Oct. 17, 1985) (order) (the "1985 Order").

[3] Investment Company Act Release Nos. 15126 (June 3, 1986) (notice) and 15205 (July 16, 1986) (order) (the "1986 Order").

[4] 1990 Mass. Act ch. 277; 1991 Mass. Acts ch. 285.

[5] Investment Company Act Release Nos. 18931 (Sept. 4, 1992) (notice) and 18988 (Sept. 30, 1992) (order) (the "1992 Order"). The 1992 Order amended the 1985 and 1986 Orders. The 1985, 1986, and 1992 Orders are referred to hereafter as the "Prior Orders".

[6] The 1990 and 1991 Amendments also authorized applicant to offer its securities to credit unions and affiliates of eligible investors (other than wholly-owned affiliates), but applicant has not offered, and will not offer, its securities to these additional investors without further order from the Commission or a change in the structure of applicant making such an order unnecessary.

[7] 1993 Mass. Acts ch. 147.

[8] The 1993 Legislation also authorizes applicant to offer its shares to national banks, but applicant will not make such an offer without a further order of the Commission or a change in the structure of applicant making such an order unnecessary.

current public offering price described in a written prospectus. Applicant asserts that a requirement to comply with section 22(d) would be impractical and unnecessarily expensive. Applicant is not registered under the Securities Act and does not now or in the future propose to make a public offering of its shares. Its shares are offered pursuant to an exemption from registration under the Securities Act only to a limited number of sophisticated institutional purchasers. These investors, except for the National Co-operative Bank, are all located in Massachusetts. Applicant does not currently sell its securities through an underwriter. Applicant offers a copy of its registration statement filed with the Commission on Form N–1A to each of its eligible investors and also furnishes them with a copy of an offering circular that contains substantially the same information that applicant would be required to furnish in a prospectus.

5. Applicant also submits that permitting the additional investor in applicant should result in further economies of scale with fixed expenses spread over a larger fund, benefitting existing investors as well as SBLIC.

6. Applicant asserts that the change made in the Enabling Legislation, permitting the sale of applicant's shares to SBLIC, is in the best interests of applicant's current investors and SBLIC and is consistent with the protection of investors and the purposes fairly intended by the policies and the provisions of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29424 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19903; 812–8388]

Pioneer Fund, et al.; Application

November 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Pioneer Fund, Pioneer II, Pioneer Three, Pioneer Bond Fund, Pioneer U.S. Government Trust, Pioneer Municipal Bond Fund, Pioneer Money Market Trust, Pioneer Short-Term Income Trust, Pioneer Europe Fund, Pioneer Growth Trust, Pioneer International Growth Fund, Pioneer Tax-Free State Series Trust, and Pioneer Winthrop Real Estate Investment Fund, including any existing or future series thereof (the "Funds"), Pioneering Management Corporation ("PMC"), Pioneer Winthrop Advisers ("PWA," together with PMC, the "Adviser"), and Pioneer Funds Distributor, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting applicants to issue multiple classes of shares representing interests in the same portfolio of securities, and to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of the shares. The requested order would supersede a prior order that permits applicants to assess and, under certain circumstances, waive a CDSC on certain redemptions of the shares (the "Prior Order").[1] Applicants request that any relief granted pursuant to the application also apply to any registered open-end investment company, including any series thereof, not currently advised by PMC but for which PMC or an affiliated person controlling, controlled by, or under common control with PMC may in the future serve as investment adviser or distributor. Any such future Fund will be subject to the representations and conditions set forth in the application.

FILING DATES: The application was filed on May 10, 1993, and amended on October 5, 1993. By supplemental letter dated November 23, 1993, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1993 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 60 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are Massachusetts business trusts and open-end management investment companies registered under the Act. PMC serves as investment adviser to all of the Funds except Pioneer Winthrop Real Estate Investment Fund ("PW Real Estate Fund"). PWA serves as investment adviser to PW Real Estate Fund. PMC and Winthrop Advisors Limited Partnership serve as subadvisers to PW Real Estate Fund.

2. The Distributor acts as the principal underwriter for the Funds, except Pioneer Money Market Trust. Pioneer Money Market Trust is an issuer agent for its own shares.

3. Existing shares of each Fund except Pioneer Money Market Trust (the "Non-Money Market Funds") are currently sold at net asset value per share plus a front-end sales charge. Shares of Pioneer Money Market Trust are sold to the public at net asset value per share with no sales charge. Pursuant to the Prior Order, purchases of existing shares of Non-Money Market Funds in amounts of $1 million or more and purchases by certain group plans as described in each Fund's current prospectus are not subject to a front-end sales charge, but instead are subject to a CDSC of one percent on redemptions of such shares within 12 months after purchase. In addition to the front-end sales charge and the CDSC described above, each Fund has adopted a rule 12b–1 plan.

A. The Multiple Class System

1. Applicants seek an exemptive order that would permit the Funds (a) to issue an unlimited number of classes of shares; and (b) to differentiate among such classes in the following respects: any such class (i) may be subject to a rule 12b–1 plan and may make different payments pursuant to such plan ("Plan Payments") (and any other costs relating

[1] Investment Company Act Release Nos. 18325 (Sept. 19, 1991) (notice) and 18364 (Oct. 15, 1991) (order).

to obtaining shareholder approval of a rule 12b–1 plan for such class, or an amendment to such plan); (ii) may bear different class expenses, as described below; (iii) may bear a different name or designation; (iv) may be subject to different CDSC arrangements; (v) will have exclusive voting rights with respect to any rule 12b–1 plan adopted exclusively with respect to such class, except as provided in condition 7 below; (vi) may have different exchange or conversion privileges; and (vii) may bear any other incremental expense subsequently identified that may be properly allocated to such class, which allocation shall have been approved by the Commission pursuant to an amended order (the "Multiple Class System").

2. Under the Multiple Class System, shares of different classes would be sold under different sales arrangements including, for example, sales at net asset value, subject to a front-end sales charge, or subject to a CDSC. The Multiple Class System would be implemented by designating existing shares of each Non-Money Market Fund as Class A shares.

3. Under the Multiple Class System, different classes of shares could be subject to different rule 12b–1 plans. Plan Payments under a rule 12b–1 Plan would comply with applicable provisions of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (the "NASD").

4. Under the Multiple Class System, certain expenses could be attributable to a Fund, but not to a particular series thereof ("Fund Expenses"). All such Fund Expenses would be borne by the shareholders of the Fund on the basis of the aggregate net assets of the Fund without regard to class, except in the case of a Fund that has series, in which case they would be first allocated among series, based on the aggregate net assets of such series (or on such other basis as may be approved by the Board of Trustees, including, but not limited to, an equal division among the series without regard to their net assets), and then borne on the approved basis by each series and without regard to class. Expenses that are attributable to a particular series of a Fund that has multiple series, but not to a particular class thereof ("Series Expenses"), would be borne by the classes on the basis of the relative aggregate net assets of such classes.

5. Under the Multiple Class System, a Fund's Board of Trustees could determine that any of certain expenses attributable to the shares of a particular class of shares ("Class Expenses") would be borne by the class to which they were attributable. In addition to Plan Payments, Class Expenses could include: (a) Transfer agent fees; (b) printing and postage expenses related to preparing and distributing materials such as shareholder reports, newsletters, prospectuses, and proxy statements to current shareholders of a class; (c) Commission, Blue Sky, and foreign registration fees incurred by a class of shares; (d) the expenses of administrative personnel and services required to support the shareholders of a class; (e) litigation or other legal expenses relating to a class of shares; (f) Trustees' fees or expenses incurred as a result of issues relating to a class of shares; and (g) accounting expenses relating to one class of shares. Any additional Class Expenses not specifically identified above which are subsequently identified and determined to be properly applied to one class of shares shall not be so applied until approved by the Commission.

6. The Adviser and/or its affiliates may choose to reimburse or agree not to impose Class Expenses on certain classes on a voluntary, temporary basis. The amount of Class Expenses reimbursed or not imposed by the Adviser and/or its affiliates may vary from class to class. Class Expenses are by their nature specific to a given class and obviously expected to vary from one class to another. Applicants thus believe that it is acceptable and consistent with shareholder expectations to reimburse or agree not to impose Class Expenses at different levels for different classes of the same Fund or series.

7. The Adviser and/or its affiliates also may reimburse or agree not to impose Fund Expenses and/or Series Expenses (with or without a reimbursement of or agreement not to impose Class Expenses), but only if the same proportionate amount of Fund Expenses and/or Series Expenses are reimbursed or not imposed for each class. Thus, any Fund Expenses that are reimbursed or not imposed would be credited to each class of a portfolio based on the relative net assets of the classes. Similarly, any Series Expenses that are reimbursed or not imposed would be credited to each class of that series according to the relative net assets of the classes. Fund Expenses and Series Expenses apply equally to all classes of a given portfolio. Accordingly, it may not be appropriate to reimburse or not impose Fund Expenses or Series Expenses at different levels for different classes of the same Fund or series.

8. Because of the varying Plan Payments and Class Expenses that may be borne by each class of shares, the net income of (and dividends payable with respect to) each class may be different from the net income of (and dividends payable with respect to) the other classes of shares of a Fund. Dividends paid to holders of each class of shares of a Fund would be declared and paid on the same days and at the same times and, except as noted with respect to the varying Plan Payments and Class Expenses, would be determined in the same manner and would be paid in the same amount. Except for money market funds (which maintain a constant net asset value per share pursuant to rule 2a-7 under the Act and declare dividends on a daily basis) the net asset value per share of each class of shares will vary.

9. Shares of each class generally may be exchanged only for shares of a class with similar characteristics in another Fund. Shares of any class of a Fund, including a class with a CDSC feature, may be exchanged for shares of certain money market funds that do not impose a CDSC, may or may not be subject to a rule 12b-1 plan or may not participate in the Multiple Class System ("Money Market Exchange Shares"). For purposes of imposing any applicable CDSC on Money Market Exchange Shares (and applying any applicable conversion feature), the period during which the shareholder held the exchange shares would be counted, except that a Fund may elect not to count the period during which the shareholder held the Money Market Exchange Shares. All such exchanges will be allowed only between Funds that are within the same "group of investment companies" as that term is defined in Rule 11a-3 under the Act. At the discretion of the Trustees, exchanges may also be permitted among dissimilar classes of any Fund should a shareholder cease to be eligible to purchase shares of the original class by reason of a change in the shareholder's status. All permitted exchanges will comply with the provisions of Rule 11a-3 under the Act.

10. A conversion feature will automatically convert shares of one class ("Purchase Class") to shares of another class with different features ("Target Class") after the expiration of a specified period, subject to terms fully disclosed in the Fund's then-current prospectus. All conversions will be done at net asset value without the imposition of any sales load, fee, or other charge, so that the value of each shareholder's account immediately before conversion will be the same as the value of the account immediately after conversion. After conversion, the Target Class shares will be subject to an asset-based sales charge and/or service

fee, if any, that in the aggregate are lower than the asset-based sales charge to which Purchase Class shares were subject prior to the conversion.

11. For purposes of the conversion, all Purchase Class shares in a shareholder's account that were acquired through the reinvestment of dividends and other distributions paid in respect of such shares (and which had not yet converted) will be considered to be held in a separate sub-account ("Dividend Purchase Shares"). Each time any Purchase Class shares in the shareholder's account converted, an equal portion of Dividend Purchase Shares then in the sub-account will also convert and will no longer be considered held in the sub-account. The portion will be determined by the ratio that the shareholder's converting Purchase Class shares bears to the shareholder's total Purchase Class shares, subject to the conversion feature, but excluding Dividend Purchase Shares.

12. Any conversion will be subject to the continuing availability of an opinion of counsel or a private letter ruling from the Internal Revenue Service to the effect that the conversion did not constitute a taxable event under federal income tax law. Conversion might be suspended if such an opinion or ruling were no longer available.

13. As part of its ongoing plan to market shares of the Funds outside of the United States, applicants have used local language prospectuses to distribute shares to investors in foreign countries. Applicants will not offer all classes of shares that are available to United States investors to foreign investors pursuant to foreign prospectuses. Foreign prospectuses generally will offer less than all classes on shares available to United States investors. Foreign investors therefore will be eligible to purchase only the classes of shares offered in the foreign prospectus available in that foreign country. Applicants propose to disclose in such a prospectus the existence of each class of shares of the Fund and to identify the investors eligible to purchase such shares. Applicants will not, however, disclose in a foreign prospectus or in advertisements or sales literature used in those foreign countries the expenses, performance data, services, fees, distribution arrangements, sales charges (if any), conversion features, and exchange privileges of any class not available to foreign investors.

14. If applicants decide to offer more than one class of shares to foreign investors, applicants will disclose in the foreign language prospectus and in advertisements or sales literature used in those foreign countries the expenses, performance data, services, fees, distribution arrangements, sales charges (if any), conversion features, and exchange privileges of each class available to foreign investors.

15. If a Fund offers a class of shares exclusively to foreign investors and does not offer that class to investors in the United States, the Fund's prospectuses available to investors in the United States will disclose only the existence of the class available to foreign investors.

B. The CDSC Arrangement

1. Under the proposed CDSC arrangement, shares of classes of a Fund may be subject to a CDSC if such shares are redeemed or repurchased within a prescribed period of time after their purchase. Any CDSC would be imposed on the lesser of (a) the net asset value of the shares at the time of purchase, and (b) the net asset value of the shares at the time of repurchase or redemption.

2. No CDSC would be imposed with respect to: (a) The portion of redemption or repurchase proceeds attributable to increases in the value of the shares due to capital appreciation; (b) shares acquired through the reinvestment of income dividends or capital gain distributions; or (c) shares held for more than a certain period of time after their purchase. In determining whether a CDSC would be payable, it would be assumed that shares, or amounts representing shares, that are not subject to a CDSC would be redeemed or repurchased first and other shares or amounts would be redeemed or repurchased in the order purchased.

3. The amount of the CDSC and the timing of its imposition may vary. Any change in the terms of a CDSC will be reflected in the affected Fund's prospectus. In addition, any such change will not affect shares that have already been issued unless such change would result in terms more favorable to the holders of such shares, such as by reducing the amount of the CDSC or reducing the period during which a redemption or repurchase would be subject to a CDSC. No CDSC would be imposed on any shares purchased prior to the effective date of the requested order, except as permitted under the Prior Order.

4. Applicants propose to waive or reduce the CDSC in the following circumstances: (a) Redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code (the "Code"), of a shareholder; (b) redemptions in connection with distributions from Individual Retirement Accounts, 403(b) programs, or qualified retirement plans (i) that are on account of a participant's disability or death, (ii) that are part of a series of substantially equal payments made over the life expectancy of the participant or the joint life expectancy of the participant and his or her beneficiary, (iii) that constitute a tax-free return of excess contributions described in section 401(a)(8), 401(g), 403(b), 408(d)(4), 408(d)(5), 408(k)(6), or 501(c)(18)(D) of the Code, or (iv) that are required by law in connection with any such distribution; (c) redemptions by a 403(b) program or a qualified retirement plan (i) which are rolled over to or reinvested in a Fund (other than PW Real Estate Fund) account or (ii) which are in the form of a loan to the participant as described in section 72 of the Code; (d) redemptions by a qualified defined contribution plan which represent a participant's directed transfer pursuant to a prior agreement with the Distributor; (e) redemptions of shares acquired by any state, county, or city, or any instrumentality, department, authority, or agency thereof, which is prohibited by applicable laws from paying a sale charge or commission in connection with the acquisition of shares of any registered investment management company; (f) redemptions pursuant to each Fund's right to liquidate or involuntarily redeem shares in a shareholder's account; (g) limited automatic redemptions as set forth in the prospectus pursuant to a Fund's systematic withdrawal plan; and (h) redemptions in connection with the redemption of shares of any Fund that is combined with another fund, investment company, or personal holding company by virtue of a merger, acquisition, or other similar reorganization transaction.

5. If the Funds waive or reduce a CDSC, such waiver or reduction will be applied uniformly to all shares in the specified category. If a Fund which has been waiving or reducing a CDSC determines not to waive or reduce such CDSC any longer, the disclosure in the Fund's prospectus will be appropriately revised. Shares purchased prior to the termination of such waiver or reduction would be entitled to the waiver or reduction of the CDSC as provided in the Fund's prospectus at the time of the purchase of such shares.

Applicants' Legal Analysis

1. Applicants seek an exemption from sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of multiple classes of shares might be deemed to result in the issuance of a senior security, as defined by section 18(g), and thus to be

prohibited by section 18(f)(1), and to violate the equal voting provisions of 18(i). In addition, applicants request an exemption from sections 2(a)(32), 2(a)(35), and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the proposed CDSC arrangement.

2. Applicants assert that the proposed Multiple Class System does not raise any of the legislative concerns that section 18 was designed to redress. The Multiple Class System would not involve borrowings and would not affect the Funds' existing assets or reserves. The proposed arrangement would not increase the speculative character of the shares of any Fund, because each class of shares would participate *pro rata* in all of the Fund's appreciation (if any), income, and expenses (with the exception of varying Plan Payments and Class Expenses). No class of shares will have any preference or priority over any other class in the Fund in the usual sense (that is, no class will have distribution or liquidation preference with respect to particular assets and no class will be protected by any reserve or other account).

3. Applicants assert that the proposed allocation of expenses and voting rights in the manner described is equitable and will not discriminate against any group of shareholders. Investors purchasing shares offered in connection with a rule 12b-1 plan and receiving services provided under such plan would bear costs associated with such services, and would receive the added benefits of economies of scale and portfolio management advantages that may result from combining the assets of investors in a single, larger portfolio. Conversely, investors purchasing shares that would not be covered by a plan would not be burdened with such expenses and, in addition, would have no need for voting rights with respect to a rule 12b-1 plan. These investors, similarly, would benefit from economies of scale and portfolio management advantages.

4. Applicants assert that there is no rationale for disclosing to a foreign investor information about classes not offered in the foreign country, or for disclosing to a United States investor information about classes not offered in the United States. In addition, requiring full cross-disclosure in such circumstances would cause the Fund to bear the needless expense of translating information into a foreign prospectus that would not be relevant to a prospective investor because the investor could not purchase those shares.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund or a series and be identical in all respects except as set forth below. The Funds may differentiate among such classes only in the following respects: Any such class (a) may be subject to a rule 12b-1 plan and may make different Plan Payments pursuant thereto (and bear any other costs relating to obtaining shareholder approval of a rule 12b-1 Plan for such class, or an amendment to such rule 12b-1 plan); (b) may bear different Class Expenses limited to: (i) Transfer agency fees (including the incremental cost of monitoring a CDSC or a CDSC and conversion feature applicable to a specific class of shares); (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, newsletters, prospectuses and proxy statements to current shareholders of a specific class; (iii) Commission, Blue Sky, and foreign registration fees incurred by a specific class of shares; (iv) the expenses of administrative personnel and services required to support the shareholders of a specific class (including, but not limited to, maintaining telephone lines and personnel to answer shareholders' inquiries about their accounts or about the Funds); (v) litigation or other legal expenses relating to a specific class of shares; (vi) Trustees' fees or expenses incurred as a result of issues relating to a specific class of shares; and (vii) accounting expenses relating to a specific class of shares; (c) may bear a different name or designation; (d) may be subject to different CDSC arrangements or CDSC and conversion arrangements; (e) will have exclusive voting rights with respect to any rule 12b-1 plan adopted exclusively with respect to such class (except as provided in condition 7 below); (f) may have different exchange privileges; and (g) may bear any other incremental expense subsequently identified that may be properly allocated to such class, which allocation shall be approved by the Commission pursuant to an amended order.

2. The Board of Trustees of each Fund, including a majority of the non-interested Trustees, has approved the Multiple Class System. The minutes of the meetings of the Trustees of the Funds regarding the deliberations of the Trustees concerning, and their approval of, the Multiple Class System reflect in detail the reasons for the Trustees' determination that the proposed Multiple Class System is in the best interests of the Funds and their respective shareholders.

3. The initial determination of Class Expenses that will be applied to a class of shares and any subsequent changes thereto will be reviewed and approved by votes of the Boards of Trustees of each Fund, including majorities of the non-interested Trustees. Any person authorized to direct the application and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the Fund's Board of Trustees, and the Trustees shall review at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflict among the interests of the classes of shares. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. The Trustees, including a majority of the non-interested Trustees, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. In addition, if a conflict arises, the Adviser or the Distributor, each at its own cost, will take action to eliminate such conflict, up to and including establishing a new registered management investment company.

5. The Trustees will receive quarterly and annual statements concerning the amounts expended under any rule 12b-1 plans and such reports will comply with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In these statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class.

Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee payable by that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the non-interested Trustees in the exercise of their fiduciary duties.

6. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

7. If a Fund implements an amendment to its rule 12b-1 plan that would increase materially the amount that may be borne by the shares of a Target Class under the plan, existing Purchase Class shares will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to Federal taxation. In accordance with condition 4 any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the adviser and the distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

8. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

9. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time on the same day, and will be paid in the same amount, except that Plan Payments and Class Expenses borne by a class will be borne exclusively by that class.

10. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares of the Funds and the proper application of expenses among the classes have been reviewed by an expert (the "Expert"). The Expert has rendered an amended report to the application filed as Exhibit C–1 that such methodology and procedures are adequate to ensure that such calculations and applications will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute expert, will monitor the manner in which the calculations and applications are being made and, based upon such review, will render at least annually a report to the Boards of Trustees of the Funds that the calculations and applications are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and (30)(b)(1) of the Act. The work papers of the Expert with respect to such reports, following a request by the Funds (which the Funds agree to provide), will be available for inspection by the Commission's staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate or Assistant Administrator. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 70 of the AICPA, and the ongoing reports will be "Reports on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper application of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 10 above and will be concurred with by the Expert, or an appropriate substitute expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 10 above. Applicants agree to take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute expert.

12. The prospectus of each Fund having more than one class of shares will include a statement to the effect that any person entitled to receive compensation for selling Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Multiple Class System will be set forth in guidelines which will be furnished to the Trustees.

14. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales charges, deferred sales charges, conversion features, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus, except as noted below. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Fund, it will disclose the expenses and/or performance data applicable to each other class of shares of the Fund, except as noted below.

If a Fund offers less than all classes of shares to foreign investors pursuant to a foreign prospectus, the Fund will identify each class of shares of the Fund and the investors eligible to purchase those classes. Applicants will disclose in the appropriate foreign prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, conversion features, and exchange privileges applicable to each class of shares which the foreign investor is eligible to purchase. Advertisements and sales literature, as well as information available for publication in newspapers, in a foreign country where less than all classes of shares are offered to foreign investors pursuant to a foreign prospectus will disclose information about each class of shares available for purchase by foreign investors in such country.

If a Fund offers a class of shares exclusively to foreign investors and does not offer that class to investors in the United States, the Fund's prospectuses available to investors in the United States will disclose the

existence of the class available to foreign investors.

The Funds will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report to the extent that any information relating to expenses or performance is provided. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Funds as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund.

The information provided by applicants for publication in any United States newspaper or similar listing of the Funds' net asset values and public offering prices will separately present this information for each class of shares available to investors in the United States.

15. Applicants acknowledge that the grant of the order requested by the application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that a Fund may make pursuant to a rule 12b-1 plan in reliance on such order.

16. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29425 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19901; 811–2996]

SLH High Yield Fund Inc.; Application for Deregistration

November 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: SLH High Yield Fund Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 24, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Maryland corporation. On January 31, 1980, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on May 16, 1980, and applicant commenced its initial public offering shortly thereafter.

2. On April 22, 1992, applicant's board of directors approved a plan of reorganization whereby applicant agreed to transfer all of its assets and liabilities to High Income Portfolio (the "Acquiring Fund"), a portfolio of Shearson Lehman Brothers Income Portfolios, in exchange for shares of beneficial interest of the Acquiring Fund. In accordance with rule 17a-8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[1]

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser.

3. Proxy materials were distributed to applicant's shareholders of record on or about July 31, 1992. Preliminary and definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC. The reorganization was approved, in accordance with Maryland law, by applicant's shareholders at a meeting held on October 13, 1992.

4. On November 20, 1992, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange, applicant received shares of the Acquiring Fund having an aggregate net asset value equal the net assets transferred to the Acquiring Fund. The exchanges were made at net asset value determined as of the close of business on November 20, 1992. The shares received in exchange for applicant's assets were distributed to applicant's shareholders *pro rata* in accordance with their respective interests in applicant.

5. The expenses in connection with the reorganization consisted of legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately $111,100. These expenses were borne by applicant and the Acquiring Fund in the amount of $53,322 and $57,778, respectively.

6. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29353 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19905; 813-114]

Stone Street Fund 1984, et al.; Application

November 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Stone Street Fund 1984, Stone Street Fund 1985, Stone Street Fund 1986, Stone Street Fund 1987, Stone Street Fund 1988, Stone Street Fund 1989, Stone Street Fund 1990, L.P., Stone Street Real Estate Fund 1990, L.P., Stone Street Fund 1991, L.P., Stone Street Real Estate Fund 1991, L.P., Stone Street Fund 1992, L.P., Stone Street Real Estate Fund 1992, L.P., Stone Street Fund 1993, L.P., and Stone Street Real Estate Fund 1993, L.P., on behalf of themselves and other similar partnerships which may be offered to the same class of limited partner investors (the "Partnerships"); and Stone Street Corp., Stone Street Investors Corp. Stone Street Advisors Corp., Stone Street Capital Corp., Stone Street Managers Corp., Stone Street Venture Corp., Stone Street Enterprise Corp., Stone Street Realty Corp., Stone Street Principal Corp., Stone Street Principal Realty Corp. Stone Street Performance Corp., Stone Street Performance Realty Corp., Stone Street Resource Corp., and Stone Street Resource Realty Corp. (the "General Partners").

RELEVANT ACT SECTIONS: Exemption requested pursuant to sections 6(b) and 6(e) from all of the provisions of the Act except sections 9, 17 (except for certain provisions of sections 17 (a), (d), (f), and (g) as described herein), 30 (except for certain provisions of sections 30 (a), (b), and (d) as described herein), and 36–53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order pursuant to sections 6(b) and 6(e) from all of the provisions of the Act except sections 9, 17 (except for certain provisions of sections 17(a), (d), (f), and (g) as described herein), 30 (except for certain provisions of sections 30 (a), (b), and (d) as described herein), and 36–53, and the rules and regulations thereunder. The requested order would supersede a prior order (the "Prior Order") that exempted the Partnerships from most of the provisions of the Act and the regulations thereunder.

FILING DATE: The application was filed on August 6, 1992 and amended on February 2, 1993, September 27, 1993, and November 23, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing request should be received by the SEC by 5:30 p.m. on December 20, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 85 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Partnership is a limited partnership formed under the laws of the state of Delaware. Stone Street Corp., Stone Street Investors Corp., Stone Street Advisors Corp., Stone Street Capital Corp., Stone Street Venture Corp., and Stone Street Management Corp. are corporations organized under the laws of the state of New York and are each the general partner of Stone Street Fund 1984, Stone Street Fund 1985, Stone Street Fund 1986, Stone Street Fund 1987, Stone Street Fund 1988 and Stone Street Fund 1989, respectively. Stone Street Enterprise Corp., Stone Street Principal Corp. Stone Street Performance Corp., Stone Street Resource Corp., Stone Street Realty Corp., Stone Street Stone Street Principal Realty Corp., Stone Street Performance Realty Corp., and Stone Street Resource Realty Corp. are corporations organized under the laws of the state of Delaware and are each the general partner of Stone Street Fund 1990, L.P., Stone Street Fund 1991, L.P., Stone Street Fund 1992, L.P., Stone Street Fund 1993, L.P., Stone Street Real Estate Fund 1990, L.P., Stone Street Real Estate Fund 1991, L.P., Stone Street Real Estate Fund 1992, L.P., and Stone Street Real Estate Fund 1993, L.P., respectively.

2. The Prior Order exempted the Partnerships from most provisions of the Act and the regulations thereunder and granted confidential treatment for certain filings.[1] On the basis of applicants' experience in administering the Partnerships, changes since the Prior Order in the securities markets, tax laws and regulations, securities laws and regulations, and the expectations of Partnership investors, applicants believe that additional relief is necessary to provide greater flexibility in the management of the Partnerships. If granted, the exemptive relief sought by this application will supersede the terms of the Prior Order, as amended.

3. The Goldman Sachs Group, a Delaware limited partnership, is a general partner of Goldman, Sachs & Co. Goldman, Sachs & Co., a New York limited partnership, is a registered broker-dealer. The Goldman Sachs Group through its subsidiaries and controlled entities (collectively "Goldman Sachs") is engaged in various facets of the investment banking, securities, and commodities businesses. The Partnerships are a series of investment limited partnerships that Goldman, Sachs & Co. initially established in 1983 to enable certain key employees of Goldman Sachs to pool their investment resources and to receive the benefit of certain investment opportunities which come to the attention of Goldman Sachs. The principal purpose of the Partnerships is to reward and retain key personnel and to satisfy their desire to have an opportunity to invest with the partners of The Goldman Sachs Group. A secondary purpose of the Partnerships is to provide former general partners of The Goldman Sachs Group and/or Goldman, Sachs & Co. with an additional investment opportunity.

4. Limited partnership interests in the Partnerships will be offered only to eligible employees of Goldman Sachs ("Eligible Employees"), certain limited partners of The Goldman Sachs Group and their immediate family members ("GS Limited Partners"), and to certain paid consultants of Goldman, Sachs & Co.'s affiliates ("Consultants"). To be eligible, an investor must be an "accredited investor" under rule 501(a)(6) of regulation D of the Securities Act of 1933.

5. Of the approximately 7,000 employees of Goldman Sachs only a small proportion qualify to invest in the Partnerships. Eligible Employees are

[1] Stone Street Fund 1984, *et al.*, Investment Company Act Release Nos. 13850 (March 24, 1984) (notice) and 13921 (May 2, 1984) (order). The Prior Order was amended on two occasions: Stone Street Fund 1984, *et al.*, Investment Company Act Release Nos. 14289 (Dec. 21, 1984) (notice) and 14330 (Jan. 17, 1985) (order); and Stone Street Fund 1984, *et al.*, Investment Company Act Release Nos. 15779 (June 8, 1987) and 15862 (July 2, 1987) (order).

experienced professionals in the investment banking, securities or commodities business, or in administrative, financial, accounting, legal, or operational activities related thereto.

6. Each GS Limited Partner that is permitted to invest in the Partnerships will be a former general partner of The Goldman Sachs Group and/or Goldman Sachs & Co. and will be known to Goldman, Sachs & Co. to be actively managing his or her own business affairs and not disabled by age or illness from doing so. As former general partners of The Goldman Sachs Group and/or Goldman, Sachs & Co., these individuals will be equipped by education and experience to understand and evaluate the structure, management, and plan of the Partnerships as compared to other investment opportunities. At the discretion of Goldman, Sachs & Co. and at the request of a GS Limited Partner, immediate family members of such GS Limited Partner may participate in the Partnerships provided that any such family member meets the standard for "accredited investor" under rule 501(a)(6) of regulation D under the Securities Act of 1933. The aggregate capital contributions of the GS Limited Partners investing in a Partnership shall not exceed 49% of the aggregate capital contribution to such Partnership and no single GS Limited Partner may invest more than 3% of the aggregate capital contributions to the Partnership.

7. The Goldman Sachs Group may also offer, at its sole discretion, Partnership interests to the Consultants. To be eligible, each Consultant must meet the accredited investor standard and must be under contract with Goldman, Sachs & Co. or its affiliates. Under such contracts the Consultants are on regular retainer, with such retainer being paid out on either a weekly, monthly, or quarterly basis regardless of whether actual services were rendered during that period, and either receive contributions to office expenses or are provided office space within Goldman Sach's offices. In addition to receiving a retainer and office expenses, Consultants are compensated for the services they render through a performance bonus paid out annually. This compensation structure is very similar to that of the vice presidents of Goldman Sachs, where each vice president is paid a regular salary throughout the year with a substantial portion of their compensation coming in the form of a performance bonus paid out annually. The Consultants are very limited in number (currently less than 25) and will have levels of expertise and sophistication at least comparable to, and in most cases exceeding that of, Eligible Employees and will have similar access to the directors and officers of the General Partners.

8. The Partnerships will operate on a calendar year basis, with a single subscription period during which Partnership interests may be purchased in two or more installments. Each General Partner will make a capital contribution so that it has a one percent interest in the capital of the Partnership. Interests will be offered and sold under a section 4(2) private placement exemption from the registration requirements of the Securities Act of 1933 pursuant to regulation D. No fees will be charged with respect to sales of Partnership interests.

9. Partnership interests will be purchased for cash by investors, and neither Goldman Sachs nor the Partnerships will extend credit to investors who purchase Partnership interests to enable such investors to meet capital calls or other capital commitments. Additional capital contributions, in proportion to a limited partner's initial investment, may be required in the event the Partnership makes investments requiring additional capital contributions and/or additional investments in existing portfolio companies. No limited partner will be required to make an additional capital contribution in an amount greater than 50% of such limited partner's original capital commitment. Interests in the Partnerships are non-transferable except to other eligible investors and with the express consent of the General Partner. Partnership interests are not generally redeemable, except that the estate of a limited partner may tender his or her interest for purchase by the applicable General Partner of the Partnership.

10. The management of the Partnerships will be vested exclusively in the General Partners, each of which is a wholly-owned subsidiary of The Goldman Sachs Group. The directors and officers of the General Partners shall be general or limited partners of The Goldman Sachs Group and/or Goldman, Sachs & Co. and may also include employees of Goldman, Sachs & Co. or its affiliates. The General Partners will research and evaluate potential investment opportunities through the resources of Goldman Sachs and with the assistance of selected employees of Goldman Sachs, monitor existing investments, and make all buy and sell decisions. No compensation will be paid to the General Partners for their services and the General Partners will absorb their out-of-pocket expenses without reimbursement from the Partnerships. No compensation will be paid to the directors or officers of the General Partners by the Partnerships for their services to the General Partners incurred conducting the business of the Partnerships.

11. The General Partners will secure from The Goldman Sachs Group, affiliates of The Goldman Sachs Group and/or an entity formed by or affiliated with the individual general partners of The Goldman Sachs Group an investment in each Partnership in an amount equal to at least 10% of the initial capital contributions of the Eligible Employees and Consultants. This investment may take the form of a capital contribution through each General Partner and/or the purchase of an interest in the Partnership. The net worth of each General Partner will be adequate to meet all net worth requirements set by the Internal Revenue Service for the issuance of an advance ruling that the Partnerships constitute partnerships for federal income tax purposes.

12. The General Partners will send the limited partners annual reports regarding the operations and assets of the Partnerships, including audited financial statements. A Partnership will be dissolved upon the resignation, withdrawal, dissolution, or bankruptcy of the applicable General Partner; the Partnership becoming insolvent; the sale of all or substantially all of a Partnership's assets; or the affirmative vote of a majority in interest of the limited partners. The General Partners may not be removed by the limited partners of the Partnerships or by any other person or entity during the terms of the Partnerships.

13. Although each General Partner will have discretion as to distribution of cash flow and proceeds from investments, its general policy will be to distribute proceeds from the sale or other disposition of long term investments as soon as practicable after receipt and not to reinvest the proceeds from the disposition of a Partnership's initial investments. The profits and losses of each Partnership for any given period of time will be allocated and distributed simultaneously among each General Partner and the limited partners on a *pro rata* basis based upon the proportion of the total amount contributed to the Partnership by the General Partner and the limited partners.

Applicants' Legal Analysis

1. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the

Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer or affiliated employers or by former employees of such employers.

2. Section 6(b) authorizes the SEC to exempt employees' securities companies from the provisions of the Act to the extent that such exemptions are consistent with the protection of investors. Applicants submit that the exemptions requested are consistent with the protection of investors in view of the substantial community of interest among all of the parties and the fact that each Partnership is an "employees securities' company" as defined in section 2(a)(13) of the Act. The Partnerships are organized and managed by persons who will be investing in the Partnerships, and will not be promoted by persons seeking to profit from fees or investment advice or from the distribution of securities.

3. On behalf of the Partnerships, applicants request relief from all of the provisions of the Act, and the regulations thereunder, except sections 9, 17 (except for certain provisions of sections 17(a), (d), (f), and (g) as described herein), 30 (except for certain provisions of sections 30(a), (b), and (d) as described herein), and 36–53, and the rules thereunder.

4. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other property. An exemption is requested from section 17(a) to permit the Partnerships to: (a) Purchase from Goldman Sachs, (i) securities of investment vehicles, generally partnerships, formed from time to time by the partners of The Goldman Sachs Group to make a specified investment or type of investment ("GS Partners' Investment Vehicles") and securities of investment vehicles, generally partnerships, formed from time to time by Goldman Sachs to make a specified investment or type of investment, in which Goldman Sachs is the managing partner and in which outside investors may participate as limited partners ("GS Sponsored Investments"), and (ii) interests in properties sponsored by offered by, or previously acquired for the account of, Goldman Sachs, GS Partners' Investment Vehicles, or GS Sponsored Investments; (b) sell to Goldman Sachs, GS Partners' Investment Vehicles, or GS Sponsored Investments securities interests in properties previously acquired by the Partnerships; (c) invest in companies, partnerships, or other investment vehicles offered, sponsored, or managed by Goldman Sachs, GS Partners' Investment Vehicles, or GS Sponsored Investments, or to purchase securities from GS Partners' Investment Vehicles or GS Sponsored Investments; (d) invest in securities of, or lend money to, entities with which Goldman Sachs or its affiliates have performed investment banking or other services and from which they may have received fees; (e) purchase interests in a company or other investment vehicle (generally, a partnership, trust, or joint venture) in which Goldman Sachs, GS Partners' Investment Vehicles, or GS Sponsored Investments already own 5% or more of the voting securities of the company or vehicle or which company or vehicle is otherwise affiliated with a Partnership or Goldman Sachs; (f) purchase securities, instruments and, when permissible by law, commodities, of the type consistent with the investment objectives of the Partnerships, underwritten on a principal basis (including as member of a selling group) or issued by Goldman Sachs on terms at least as favorable to the Partnership as those offered to investors other than affiliated persons of The Goldman Sachs Group; (g) participate as a counterparty with or as a counterparty to Goldman Sachs, a GS Partners' Investment Vehicle, or a GS Sponsored Investment in connection with derivative investments, including but not limited to swaps and forwards of all types; and (h) participate as a selling security holder in an offering that is underwritten on a principal basis by Goldman Sachs (including as a member of a selling grpup). These transactions will be effected only upon a determination by the board of directors of a General Partner that the terms of the transaction are reasonable and fair to the limited partners of the Partnership and do not involve overreaching of the partnership or its limited partners on the part of any person concerned.

5. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person in contravention of such rules and regulations as the SEC may prescribe for the purpose of limiting or preventing participation by such companies. Rule 17d–1 was promulgated pursuant to section 17(d) and prohibits most joint transactions unless approved by order of the SEC. An exemption is requested pursuant to section 17(d) and rule 17d–1 to permit the Partnerships to participate in joint transactions, including the following: (a) a guarantee directly or indirectly by Goldman Sachs or a Goldman Sachs affiliate of a loan to a Partnership on a recourse basis; (b) an investment by one or more Partnerships in a non-GS partners' investment vehicle or a non-GS sponsored investment (i) in which Goldman Sachs, a Goldman Sachs affiliate, a GS Partners' Investment Vehicle, a GS Sponsored Investment, or an employee, officer, or director of the General Partner is a participant or plans to become a participant and/or (ii) with respect to which Goldman Sachs or a Goldman Sachs affiliate is entitled to receive placement fees, investment banking fees, brokerage commissions or other economic benefits or interests; and (c) an investment by one or more Partnerships in a GS Partners' Investment Vehicle or a GS Sponsored Investment including investments in which an affiliate of Goldman Sachs is a participant or plans to become a participant, including situations in which an affiliate of Goldman Sachs has a partnership or other interest in, or compensation arrangement with, the GS Partners' Investment Vehicle. Any investments by a Partnership made concurrently with a Co-Investor (as defined below) will be made by the Partnership at the same price (but not necessarily in the same amount) as the investment by the Co-Investor.

6. Section 17(f) permits a registered investment company to maintain self-custody of its securities and similar investments subject to such rules and regulations as the SEC prescribes for the protection of investors. Rule 17f–2 was promulgated pursuant to section 17(f) and sets forth detailed provisions governing self-custody of investments by a registered investment company. An exemption is requested from section 17(f) and rule 17f–1 to the extent necessary to permit Goldman, Sachs & Co. to act as custodian for the partnerships without a written contract. Any securities held by Goldman, Sachs & Co. will have the protection of a fidelity bond. An exemption is also requested to the extent necessary to establish a single brokerage account in which the Partnerships will participate. Under the joint trading account, each participant in the trading account will

be entitled to its proportionate interest in the account based upon its contribution to the trading account. Only one confirmation will be given for each trade done by the account, but securities and cash in the account will at all times be owned separately by each participant based on its proportionate contribution to the account. The terms and conditions of participation in the account will be established pursuant to a written agreement among the participants and Goldman, Sachs & Co.

7. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. An exemption is requested to the extent necessary to permit the Partnerships to comply with rule 17g–1 without the necessity of having a majority of the board of directors of the General partner who are not "interested persons" take such action and make such approvals as set forth in rule 17g–1. Since all directors of the General Partners will be affiliated persons, without the requested relief the Partnerships could not comply with rule 17g–1. Except for the requirements of approval by non-interested directors, the partnerships will comply with rule 17g–1.

8. Section 30 of the Act generally requires a registered investment company to file quarterly and annual reports with the SEC and make semi-annual reports to its stockholders. An exemption is requested from sections 30(a) and 30(b) to the extent necessary to exempt the Partnerships from filing annual and quarterly reports with the SEC. The pertinent information that would be contained in such filings must, pursuant to the terms of the partnership agreements, be sent to the limited partners of the Partnerships. Exemptive relief from section 30(d) is also necessary to permit the Partnerships to report annually, rather than semi-annually, to the limited partners.

9. Applicants believe that the General partners are not "investment advisers" within the meaning of that term in section 202(a)(11) of the Investment Advisers Act of 1940 because they will not be compensated (including no reimbursement of expenses) for furnishing investment advice. In relevant part, section 202(a)(11) defines "investment adviser" to include any person who engages in the business of advising others regarding securities for compensation.

Applicants' Conditions

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the "Section 17 Transactions") will be effected only if the General Partner determines that:

(a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the limited partners and do not involve overreaching of the Partnership or its limited partners on the part of any person concerned; and

(b) The transaction is consistent with the interests of the limited partnerships' organizational documents and the Partnership's reports to its limited partners.

In addition, the General Partners will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnerships and at least two years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. In any case where purchases or sales are made from or to an entity affiliated with a Partnership by reason of a 5% or more investment in such entity by a director, officer or employee of the General Partner, such individual will not participate in the General Partner's determination of whether or not to effect such purchase or sale.

3. The General Partners will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated person of such a person, promoter, or principal underwriter.

4. The General Partners will not invest the funds of any Partnership in any investment in which a "Co-Investor" has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and *pro rata* with the Co-Investor. The term "Co-Investor" means any person who is: (a) An "affiliated person" (as such term is defined in the Act) of the Partnership; (b) Goldman Sachs; (c) an employee, officer, or director of Goldman Sachs; (d) a GS Partners' Investment Vehicle; (e) GS Sponsored Investments; (f) any entity with respect to which Goldman Sachs provides management, investment management or similar services as manager, investment manager, or general partner or in a similar capacity, and for which it may receive compensation, including without limitation, management fees, performance fees, carried interests entitling it to share disproportionately in income and capital gains or similar compensation; or (g) a company in which an officer or director of the General Partner acts as an officer, director, or general partner, or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this Condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust established for any such family member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934, as amended (the "1934 Act"); or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the 1934 Act and rule 11Aa2–1 thereunder.

5. The General Partners will send to each limited partner who had an interest in the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partners will make an appraisal or have an appraisal made of all of the assets of the Partnership as of such fiscal year end. The appraisal of the Partnership assets may be by independent third parties appointed by the General Partners and deemed qualified by the General Partners to render an opinion as to the value of Partnership assets, using such methods and considering such information relating to the investments, assets and

liabilities of the Partnership as such persons may deem appropriate, but in the case of an event subsequent to the end of the fiscal year materially affecting the value of any Partnership asset or investment, the General Partners may revise the appraisal as they, in their good faith and sole discretion, deem appropriate. In addition, within 90 days after the end of each fiscal year of each of the Partnerships or as soon as practicable thereafter, the General Partners shall send a report to each person who was a limited partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the limited partner of his or its Federal and State income tax returns and a report of the investment activities of the Partnership during such year.

6. Each Partnership and the General Partners will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute and record forming the basis for the audited financial statements and annual reports of such Partnership to be provided to the limited partners, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29426 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1904]

Shipping Coordinating Committee, Subcommittee on Standards of Training and Watchkeeping; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:30 a.m. on January 13, 1994, in room 3442 of the Nassif Building, 400 7th Street SW., Washington DC 20590. The purpose of the meeting is to review the actions taken by the first intersessional meeting of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) working group on the comprehensive review of the International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). Items on the agenda for the twenty-fifth session STW scheduled for January 17–21, 1994 in London, will also be reviewed.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MVP–4), room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0229.

Dated: November 12, 1993.

Marie Murray,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 93–29350 Filed 11–30–93; 8:45 am]

BILLING CODE 4710–7–M

DEPARTMENT OF VETERANS AFFAIRS

Establishment of the Persian Gulf Expert Scientific Committee

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act, U.S.C. (App. I) 9(c), the Department of Veterans Affairs (VA) hereby gives notice of the establishment of the Persian Gulf Expert Scientific Committee. VA has determined that this action is in the public interest.

SUPPLEMENTARY INFORMATION: The objectives of this Committee are to advise the Assistant Chief Medical Director for Environmental Medicine and Public Health and subsequently the Under Secretary for Health, about medical findings affecting Persian Gulf era veterans. Committee members will review all aspects of patient care, medical diagnoses and will provide professional consultation as needed. The Committee may advise on other areas involving research and development and veterans benefits and/or training aspects for patients and staff.

The Committee membership will be selected on the basis of high professional achievement, expertise in injuries which might be related to the Persian Gulf experience, research in these areas, active duty military personnel and veteran representatives. Some members are selected from within VA to assure current policies and procedures are considered with new recommendations developed by the Committee. Appointments will be for two years unless otherwise directed by Secretary of Veterans Affairs.

The Designated Federal Official for the Committee is Dr. Susan H. Mather, Assistant Chief Medical Director for Environmental Medicine and Public Health.

Dated: November 18, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–29370 Filed 11–30–93; 8:45 am]

BILLING CODE 8320–01–M

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby given notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the raise in the Consumer Price Index (CPI) during the one year period ending September 30, 1993. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstone or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 1994 which began on October 1, 1993.

DATES: Those COLAs are effective December 1, 1993. The headstone or marker allowance rate is effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

Section 8041 of Public Law 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O.G.C. Prec. 17–90), VA General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA

costs during that fiscal year for procurement, transportation, Office of Memorial Programs and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1993 under the above computation method was $98. Therefore, effective October 1, 1993, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 1994 is $98.

Cost of Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Public Law 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.6 percent cost-of-living increase in social security benefits effective December 1, 1993. Therefore, applying the same percentage, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1993:

Table 1.—Improved Pension

Maximum annual rates

(1) Veterans permanently and totally disabled (38 U.S.C. 1521):
Veteran with no dependents, $7,818
Veteran with one dependent, $10,240
For each additional dependent, $1,330

(2) Veterans in need of aid and attendance (38 U.S.C. 1521):
Veteran with no dependents, $12,504
Veteran with one dependent, $14,927
For each additional dependent, $1,330

(3) Veterans who are housebound (38 U.S.C. 1521):
Veteran with no dependents, $9,556
Veteran with one dependent, $11,977
For each additional dependent, $1,330

(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):
Neither veteran in need of aid and attendance or housebound, $10,240
Either veteran in need of aid and attendance, $14,927
Both veterans in need of aid and attendance, $19,611
Either veteran housebound, $11,977
Both veterans housebound, $13,717
One veteran housebound and one veteran in need of aid and attendance, $16,662
For each dependent child, $1,330

(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
Surviving spouse alone, $5,239
Surviving spouse and one child in his or her custody, $6,863
For each additional child in his or her custody, $1,330

(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):
Surviving spouse alone, $8,380
Surviving spouse with one child in his or her custody, $10,000
For each additional child in his or her custody, $1,330

(7) Surviving spouses who are housebound (38 U.S.C. 1541):
Surviving spouse alone, $6,406
Surviving spouse and one child in his or her custody, $8,026
For each additional child in his or her custody, $1,330

(8) Surviving child alone (38 U.S.C. 1542), $1,330

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,769. (38 U.S.C. 1521(g)).

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

Table 2

(*One parent.* If there is only one parent, the monthly rate of DIC paid to such parent shall be $370 reduced on the basis of the parent's annual income according to the following formula:)

[For each $1 of annual income]

The $370 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	800	$8,893

No DIC is payable under this table if annual income exceeds $8,893.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $265 reduced on the basis of each parent's annual income, according to the following formula:

Table 3

[For each $1 of annual income]

The $265 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.06	$800	900
.07	900	1,100
.08	1,100	8,893

No DIC is payable under this table if annual income exceeds $8,893.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $250 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

Table 4

[For each $1 of annual income]

The $250 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$1,000
.03	$1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	11,956

No DIC is payable under this table if combined annual income exceeds $11,956.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $197 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

Table 5.—Section 306 Pension Income Limitations

(1) Veteran or surviving spouse with no dependents, $8,893 (Pub. L. 95–588, section 306(a)).

(2) Veteran with no dependents in need of aid and attendance, $9,469 (39 U.S.C. 1521(d) as in effect on December 31, 1978).

(3) Veteran or surviving spouse with one or more dependents, $11,956 (Pub. L. 95–588, section 306(a)).

(4) Veteran with one or more dependents in need of aid and attendance, $12,534 (38 U.S.C. 1521(d) as in effect on December 31, 1978).

(5) Child (no entitled veteran or surviving spouse), $7,269 (Pub. L. 95–588, section 306(a)).

(6) Spouse income exclusion (38 CFR 3.262), $2,836 (Pub. L. 95–588, section 306(a)(2)(B)).

Table 6.—Old-Law Pension Income Limitations

(1) Veteran or surviving spouse without dependents or an entitled child, $7,784 (Pub. L. 95–588, section 306(b)).

(2) Veteran or surviving spouse with one or more dependents, $11,224 (Pub. L. 95–588, section 306(b)).

Dated: November 23, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93–29371 Filed 11–30–93; 8:45 am]

BILLING CODE 8320–01–M

Medical Care Reimbursement Rates for FY 94

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In accordance with provisions of OMB Circular A–11 section 13.5(a), revised reimbursement rates have been established by the Department of Veterans Affairs for inpatient and outpatient medical care furnished to beneficiaries of other Federal agencies during FY 1994. These rates will be charged for such medical care provided at health care facilities under the direct jurisdiction of the Secretary on and after December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Walter J. Besecker, Director, Medical Care Cost Recovery Office (165), Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 219–4242.

SUPPLEMENTARY INFORMATION: The Interagency Billing Rates for FY 1994 are as follows.

Medicine	$730
Surgery	$1,146
Spinal Cord Injury	$682
Neurology	$671
Blind Rehabilitation	$588
Psychiatry	$311
Intermediate Medicine	$301
Rehabilitation Medicine	$513
Alcohol and Drug	$298
Nursing Home	$211
Prescription—Refill	$18
Outpatient*	$150
Dental Outpatient	$89

* Rate includes Dialysis treatment.

Prescription refill charges in lieu of the outpatient visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. These charges apply if the patient receives the prescription refills in person or by mail.

When medical services for beneficiaries of other Federal agencies are obtained by the Department of Veterans Affairs from private sources, the charges to the other Federal agencies will be the actual amounts paid by the Department of Veterans Affairs for such medical services.

Inpatient charges to other Federal agencies will be at the current Interagency per diem rate for the type of bed section or discrete treatment unit providing the care.

Dated: November 19, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93–29366 Filed 11–30–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 229
Wednesday, December 1, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the December 9, 1993 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Wednesday, December 8, 1993. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: November 29, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–29538 Filed 11–29–93; 2:09 pm]

BILLING CODE 6750–01–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 29, 1993.

A closed meeting will be held on Wednesday, December 1, 1993, at 9:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, December 1, 1993, at 9:30 a.m., will be:

Consideration of *amicus* participation.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matter bearing enforcement implications.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Stephen Luparello at (202) 272–2100.

Dated: November 29, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–29537 Filed 11–29–93; 2:08 pm]

BILLING CODE 8010–01–M

federal register

Wednesday
December 1, 1993

Part II

Department of Transportation

Federal Highway Administration

23 CFR Parts 500 and 626

Federal Transit Administration

49 CFR Part 614

Management and Monitoring Systems; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 500 and 626

[FHWA/FTA Docket No. 92–14]

RIN 2125–AC97

Federal Transit Administration

49 CFR Part 614

RIN 2132–AA47

Management and Monitoring Systems

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Interim final rule.

SUMMARY: Section 1034 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 required the Secretary of Transportation (the Secretary) to issue regulations for State development, establishment, and implementation of systems for managing: Highway pavement of Federal-aid highways; bridges on and off Federal-aid highways; highway safety; traffic congestion; public transportation facilities and equipment; and intermodal transportation facilities and systems. In addition, the Secretary must issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment.

This interim final rule includes the implementing regulations for the six management systems and the traffic monitoring system. The intended effect of this regulation is to improve the efficiency and safety of, and protect the investment in, the nation's transportation infrastructure.

DATES: This interim final rule is effective on January 3, 1994.

Comments on this interim final rule must be received on or before January 31, 1994.

FOR FURTHER INFORMATION CONTACT: For information on the general provisions, Mr. Tony Solury, 202–366–5003. For information on a specific system: Highway pavement—Mr. Frank Botelho, 202–366–1336; Bridges—Mr. Dan O'Connor, 202–366–1567; Highway safety—Mr. Fred Small, 202–366–2171; Traffic congestion—Mr. Sheldon Edner, 202–366–4066; Public transportation facilities and equipment—Mr. Sean Libberton, 202–366–0055; Intermodal transportation facilities and systems—Mr. Dane Ismart, 202–366–4071; Traffic monitoring—Mr. Ed Kashuba, 202–366–0175. Mr. Wilbert Baccus, FHWA Office of the Chief Counsel, 202–366–0780. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 1034 of the ISTEA (Pub. L. 102–240, 105 Stat. 1914, 1977) amended Title 23, United States Code, Highways (23 U.S.C.), by adding section 303, Management Systems (23 U.S.C. 303), which requires the Secretary of Transportation to issue regulations for State development, establishment, and implementation of a system for managing each of the following:

(1) Highway pavement of Federal-aid highways (PMS),

(2) Bridges on and off Federal-aid highways (BMS),

(3) Highway safety (SMS),

(4) Traffic congestion (CMS),

(5) Public transportation facilities and equipment (PTMS), and

(6) Intermodal transportation facilities and systems (IMS).

The systems must be developed and implemented in cooperation with metropolitan planning organizations (MPOs), in metropolitan areas, and with affected agencies receiving assistance under the Federal Transit Act.

The legislation, authorizes establishment of a compliance schedule and minimum standards for each such system.

States must be implementing each management system beginning in Federal fiscal year 1995, and must annually certify, before January 1 of each fiscal year (the first certification is due by January 1, 1995), that the systems are being implemented, or the Secretary may withhold up to 10 percent of funds apportioned under title 23, U.S.C., or under the Federal Transit Act (Pub. L. 88–365, Stat. 302, as amended) for any fiscal year beginning after September 30, 1995.

Section 303 also requires the Secretary to issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system (TMS) for highways and public transportation facilities and equipment.

Both the metropolitan (23 U.S.C. 134 and 49 U.S.C. app. 1607) and statewide (23 U.S.C. 135) transportation planning processes must include consideration of the needs identified through use of the management systems.

Beginning January 1, 1993, the Secretary must submit annual reports to the Congress on the progress being made by both the Secretary and the States in carrying out the provisions of 23 U.S.C. 303. The Secretary's fiscal year 1992 report was transmitted to the Congress on June 3, 1993.[1]

An advance notice of proposed rulemaking (ANPRM) was published in the June 3, 1992, **Federal Register** (57 FR 23460) to solicit early input for development of these regulations. Public workshops for the SMS were announced in the April 28, 1992, **Federal Register** (57 FR 17868) and were conducted in Washington, DC, on May 29, 1992, in San Francisco, CA, on June 1, 1992, and in Kansas City, MO, on June 10, 1992. Four public workshops for the CMS, PTMS, and IMS were announced in the May 26, 1992, **Federal Register** (57 FR 21915) and were conducted in Los Angeles, CA, on June 18, 1992, in New York, NY, on June 29, 1992, in Chicago, IL, on July 14, 1992, and in Houston, TX, on July 21, 1992. The purpose of the workshops was to obtain input to the rulemaking process to supplement the comments to the ANPRM docket. The ANPRM was issued with two docket numbers, FHWA 92–14 and FTA 92–B.

Approximately 125 individuals attended the ANPRM workshops for the SMS and over 320 attended the ANPRM workshops for the CMS, PTMS, and IMS. Summaries of comments presented and documents submitted at the public workshops are available for review in docket number 92–14.

Approximately 162 sets of comments on the ANPRM were submitted to docket numbers FHWA 92–14 and FTA 92–B. Approximately 48 percent of the comments to the dockets were from State agencies (transportation/highway departments, motor vehicle departments, State police, etc.), 13 percent from National interest groups/associations, 10 percent from regional planning agencies/MPOs, 10 percent from local agencies (cities, counties), 8 percent from private businesses or individuals, 7 percent from transit operators, and 4 percent from miscellaneous agencies. Since approximately two-thirds of the comments submitted to the FTA docket number 92–B were duplicates of those submitted to the FHWA docket number 92–14, the FTA docket was closed and those comments submitted to FTA Docket 92–B that were not duplicates were placed in FHWA/FTA docket number 92–14.

The testimony from the ANPRM workshops and comments submitted to the ANPRM dockets were reviewed and used to prepare a notice of proposed

[1] *Report to the Congress, A report of the Secretary of Transportation, Management Systems, Fiscal Year 1992*, DOT, June 3, 1993. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

rulemaking (NPRM) which was published in the March 3, 1993, **Federal Register** (58 FR 12096). The NPRM was issued under FHWA/FTA docket number 92–14 only. Four public meetings for the CMS, PTMS, and IMS were announced in the March 24, 1993, **Federal Register** (58 FR 15816) and were conducted during the NPRM comment period in San Francisco, CA, on April 1, 1993, in Atlanta, GA, on April 8, 1993, in Philadelphia, PA, on April 15, 1993, and in Kansas City, MO, on April 21, 1993. The purpose of the NPRM meetings was to obtain input to the rulemaking process to supplement the comments to the NPRM docket. Approximately 220 individuals attended the NPRM public meetings for the CMS, PTMS, and IMS. Transcripts of comments presented and copies of documents submitted at the public meetings are available for review in docket number 92–14.

Having considered the comments submitted to the NPRM docket and the testimony presented at the four public meetings, the FHWA and the FTA have revised the proposed regulation as discussed and set forth below. This regulation is being issued as an interim final rule, instead of a final rule, because of concerns regarding the anticipated data collection burden. As discussed below, the FHWA and the FTA believe that much of the data are currently available; however, the FHWA and the FTA will evaluate this after issuance of this interim final rule and the specific requirements in the rule are known to the agencies that will be implementing the systems. The FHWA and the FTA will then obtain additional information to refine the data collection burden estimates and will submit the findings to the Office of Management and Budget (OMB). Comments from interested persons on this subject may be submitted to FHWA/FTA Docket 92–14 at the address specified above. This interim final rule will be made final after review and analysis of the additional information and of the comments submitted to the docket.

This interim final rule is being issued jointly by the FHWA and the FTA because the sanction provisions may be applied to funds apportioned under the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964, as amended), as well as funds apportioned under title 23, U.S.C. In addition, the metropolitan planning provisions under both the Federal Transit Act and title 23, U.S.C., require consideration of the needs identified by the management systems. While not included as issuing agencies, other DOT administrations, such as the National Highway Traffic Safety Administration (NHTSA), may be actively involved in particular systems as appropriate.

These regulations are being issued as part 500 of subchapter F of title 23, Code of Federal Regulations (23 CFR). Subpart A of part 500 includes definitions and general requirements applicable to all of the systems. Subparts B through H of part 500 include additional regulations applicable to specific systems. The general requirements in subpart A and the requirements for the CMS, PTMS and IMS in subparts E through G are being incorporated by cross reference into the FTA's regulations as part 614 of chapter VI of title 49, Code of Federal Regulations.

A discussion of the disposition of comments received and the provisions of the interim final rule follow.

Subpart A—General

Approximately 130 sets of comments were submitted to FHWA/FTA docket number 92–14 in response to the NPRM. Approximately 41 percent of the comments to the docket were from State agencies (transportation/highway, safety, environmental), 20 percent from regional planning agencies/MPOs, 14 percent from National/regional interest groups/associations, 14 percent from local agencies (cities, counties), 6 percent from private businesses or individuals, and 5 percent from transit operators/railroad companies.

Summary of General Comments

Comment

Several commenters expressed the view that the relationship between the statewide and metropolitan planning processes and the management systems was not clear; in particular, whether the management systems provided only information for use in the planning processes to determine needed improvements or if needed improvements were to be identified by the management systems.

Response

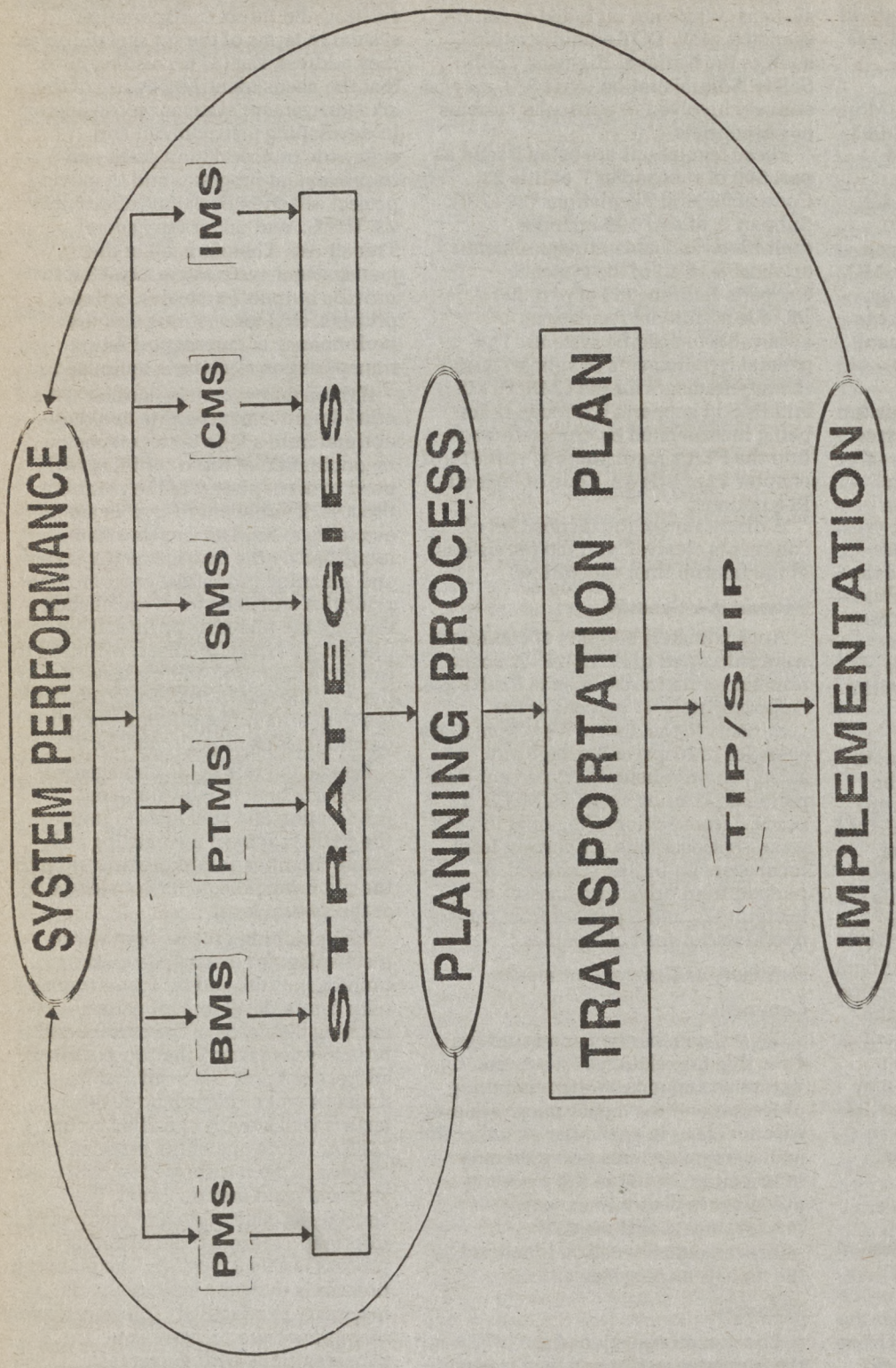
The overall objective of the ISTEA is the improved performance of statewide and metropolitan transportation systems through preservation, operational, and capacity enhancements. While the management systems will provide information concerning both the condition and the performance of the existing and future transportation system in terms of the six specific areas they address, the ISTEA also requires that the needs identified by use of the six management systems be considered in developing metropolitan and statewide transportation plans and improvement programs and in making project selection decisions under title 23, U.S.C., and under the Federal Transit Act. Therefore, all of the management systems are expected to provide outputs (strategies, actions, projects, etc.) for ensuring that the performance of current and future transportation systems is optimized.

If these outputs are in conflict with other improvements or are less than optimal from a long term perspective, reconciliation of these conflicts will need to occur as part of the planning process. If sufficient resources are not available to fund all improvements identified by the management systems and planning processes, programming priorities will need to be established through the planning process. The planning process, in effect, will need to integrate operation and preservation of the existing transportation system with the long term transportation system development and performance.

Hence, the role of the management systems is both the development of information and strategies to improve the performance of the existing and future facilities and to provide input to the planning process for consideration at the system level.

The planning process provides a mechanism for linking the existing human, natural, and built environment with future development patterns. In meeting the needs of the current and future system users, the process must address not only the results of the management systems but the other factors legislatively specified by the ISTEA. While one of the products of the process is the transportation plan (both statewide and metropolitan), the continuing generation and analysis of information through the planning process is also a product. The planning process is dynamic activity that is necessary to effectively integrate current operational and preservation considerations with longer term concerns by decisionmakers. The following figure is one option for integrating, or linking, the management systems and planning processes.

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BILLING CODE 4910-22-C

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This linkage can only be effective if the management systems and planning processes are developed and implemented in conjunction with each other and share, among other factors, consistent and complementary assumptions, goals and objectives, and data bases. Depending on State, regional, and local procedures and responsibilities, the planning process could include all or some of the management systems, elements of some of the systems (e.g., establishment of performance measures, collection or analysis of data, evaluation of effectiveness, etc.), or other variations.

The FHWA and the FTA will provide further guidance and technical assistance on the relationship between the management systems and planning processes.

Comment

Many of the commenters suggested that the roles and responsibilities of States, MPOs, and other involved agencies be specifically stated in the regulations, particularly for MPOs in transportation management areas (TMAs).

Response

The FHWA and the FTA strongly believe that organizational responsibilities and technical capabilities among the involved agencies throughout the country, and even within a State, vary so significantly that it would be inappropriate to issue a regulation that mandates uniform responsibilities for specific classes of agencies. The affected agencies are the appropriate ones to assess their capabilities and mutually determine their respective roles and responsibilities. This flexibility has been retained in the interim final rule.

Comment

Several commenters believed that the management systems should only provide "information," not specific projects or actions, to be used in statewide and metropolitan planning processes to identify and evaluate specific strategies for implementation. Inconsistency in language in the NPRM (some subparts indicated that identification of strategies, actions, projects, etc., were part of the management systems while others did not) was cited by the commenters to support this position.

Response

As noted above under the discussion of the linkage of the management systems and the planning processes, the legislation indicates that the management systems are to identify needs. The NPRM was intended to specify this legislative requirement and the interim final rule has been rewritten to clarify this point. Also, as discussed above, the agencies involved have the flexibility to link the management systems and planning processes to meet their specific institutional arrangements.

Comment

Many of the State agencies objected strongly to being held responsible for implementing the management systems for facilities not under their jurisdiction. They also objected strongly to withholding of funds for noncompliance by other agencies (such as local governments) that have jurisdictional responsibility for the facilities. Recommendations included limiting coverage of the management systems to only those facilities under State control, the NHS or facilities of major Federal importance, or facilities that have received, or are anticipated to receive, Federal funding. Several other commenters believed that the extent of coverage was appropriate or should be expanded.

Response

While the difficulties that may be experienced in obtaining cooperation from all necessary agencies are recognized, the FHWA and the FTA believe that the Congress intended that there be broad coverage as specified in the NPRM. For example, the legislation specifically requires the PMS to cover all Federal-aid highways and the BMS to cover bridges on and off Federal-aid highways, without reference to jurisdictional control. In addition, earlier drafts of the ISTEA provided for PMS coverage of only the NHS, but the ISTEA, as enacted provides for coverage of all Federal-aid highways; thus evidencing Congress' intent that the coverage be broad. With regard to the SMS, since the lower functional classification highways have the most severe safety problems, the FHWA does not believe that Congress intended that these facilities that would have the highest potential for benefiting from highway safety actions should be excluded. The legislation also specifically requires that States develop, establish, and implement the management systems and that funds apportioned to the States may be withheld for noncompliance.

As proposed in the NPRM, and retained in the interim final rule, the Federal agencies fully intend to target any necessary sanctions to correct deficiencies and do not intend to penalize agencies that are making a good faith effort to comply. Since title 23, U.S.C., funds are apportioned to the States and the FHWA does not have a grant relationship with subunits of States and the legislation requires States to implement the systems, the FHWA has no alternative other than to hold the States accountable for assuring that the requirements are met.

Comment

Many of the commenters stated that the compliance schedules were unrealistic and that the time allowed for full implementation of the systems should be extended. Numerous suggestions were made concerning extension of compliance dates. Some commenters suggested that good faith efforts be accepted as evidence of compliance without requiring specific dates. A few commenters felt that the time for compliance was adequate or too long.

Response

The FHWA and the FTA agree that the dates for full compliance should be extended. As discussed below under the section-by-section analysis for each of the systems, the compliance dates have been extended and each system allows for a phase-in of activities between Federal fiscal year 1995 and the date that the specific system must be fully operational.

Comment

Many of the commenters strongly felt that the requirements for the various systems were inconsistent and that the rule should be rewritten to include more uniformity.

Response

The FHWA and the FTA have made significant revisions to the structure and content of each subpart and of the sections within the subpart. For example, the purpose section of each subpart uses consistent language, each subpart includes a definition for its system, each subpart has consistent section titles with similar contents, and each subpart has a compliance schedule with consistent structure.

Comment

One commenter expressed concern that the entire proposed rule does not address air quality maintenance areas.

Response

Designation of an area as an air quality maintenance area does not affect the applicability of the requirements. The management systems are applicable regardless of the status of attainment under the Clean Air Act Amendments of

1990 (CAAA), with the exception of special CMS requirements for TMAs that are nonattainment for carbon monoxide and/or ozone as discussed below under the section-by-section analysis for subpart E.

Comment

A national association and many of its members believe that the NPRM goes beyond what the ISTEA requires and is antithetical to the flexibility of the ISTEA. Many of the member agencies of this association also believe that the FHWA and the FTA exceeded their authority under the ISTEA by imposing requirements not envisioned under the legislation.

Response

The Secretary, and by delegation, the FHWA and the FTA, have the authority under title 23, U.S.C., and the Federal Transit Act to issue regulations deemed appropriate to implement legislative requirements. The FHWA and the FTA believe that many of the provisions of the NPRM were misunderstood and that the NPRM contained significant flexibility while imposing minimum requirements necessary to adequately implement the provisions of the ISTEA.

Comment

This same association and its member agencies stated that "Notwithstanding anything to the contrary in any of the individual Management Systems, the states will be permitted to design their Management Systems at appropriate levels of technical complexity and detail, depending upon the nature of the network, the issues that are appropriate to the state and locality, and public involvement." In addition, they believe that a State's certification that the Federal requirements have been met should be sufficient without further Federal review or approval.

Response

The legislation requires the Secretary to issue regulations for the management systems and requirements for the traffic monitoring system. Maximum flexibility, but not complete latitude, is provided to the States to develop systems tailored to local conditions while meeting the legislative requirements.

The suggestion that the Federal agencies accept a State certification at face value without the option of verifying the status of implementation is not accepted. Since apportioned funds may be withheld for noncompliance, the Federal agencies must have the ability to review and judge the acceptability of the certifications in order to fulfill their legislative and administrative responsibilities.

Comment

These agencies further indicated that compliance should be defined to mean that the systems have begun to be used to some degree, with "some degree" defined to mean that a program of action to improve the system to its full potential within a reasonable timeframe has been developed.

Response

The NPRM included language that was intended to permit a phase-in of the requirements, with full implementation of each system in a timeframe believed by the Federal agencies to be reasonable. The interim final rule has been rewritten to clarify this. For example, as required in the compliance section for each system, a State will be considered to be implementing a system in fiscal year 1995 if the State has developed a "work plan" (i.e., "a program of action") and has other activities specified for that system underway. The specific phase-in requirements for each system are discussed under the section-by-section analysis for that system.

Comment

These agencies suggested that the Federal agencies respond within 90 days of a State's request to accept an existing system in lieu of development of a new system.

Response

The interim final rule includes a 90-day review period. The FHWA and the FTA believe that 90 days would be sufficient if adequate documentation that demonstrates how the existing system meets the requirements is submitted with the request.

Comment

Many of the commenters expressed concern over the amount of data required by the proposed rule. They believed that data collection should be minimized, that data needs should be determined at the State and local level, and that a uniform set of data should not be required for comparing one State or metropolitan area to another.

Response

The FHWA and the FTA acknowledge that all of the systems will require data. However, the FHWA and the FTA believe that much of the data is currently available although it may need to be compiled into a format more useful to the management systems. Only those data items deemed to be essential to operation of a basic management system are specifically required by the regulations. Most of the specific data items identified in the NPRM were intended to be suggestions. The intent of the NPRM was to allow the affected agencies to develop systems to meet both their needs and the basic requirements in the regulation, and then establish data bases to support their needs. The interim final rule has been reworded to clarify whether specific data are required or suggested. In addition, as noted above, and discussed under the heading Paperwork Reduction Act, the FHWA and the FTA will obtain additional information to better estimate this burden and will submit a request to the OMB for approval of any additional information collection.

Comment

Two commenters felt that standard data sets should be required and made available for comparison purposes. They stated that the NPRM proposed excessive flexibility in designing and operating management systems or lacks focus in data requirements that would assure continuation of fragmentary, uncoordinated data collection which fails to meet national needs for transportation system management, planning, and evaluation of alternative strategies and that data collected will differ between regions and states.

Response

The FHWA and the FTA believe that the Congress intended that the management systems be used by State and local officials to aid in decisionmaking and not for establishing a nationwide data base for use by the DOT for either peer comparisons or to meet its internal data needs. The FHWA and the FTA do not believe that mandating standardized data sets is either necessary or warranted. This function can be better served by other mechanisms, such as the FHWA's Highway Performance Monitoring System (HPMS), FTA Section 15 data, and the newly established Bureau of Transportation Statistics.

Comment

Many of the commenters stated that the rules should allow a varying degree of complexity for the various levels of highway functional classes and for the various levels of sophistication found among the involved governmental agencies or units.

Response

The FHWA and the FTA agree. For most of the systems, the NPRM allowed such flexibility. The interim final rule retains and expands this flexibility as

discussed in the analysis of comments for each system below.

Comment

One individual believes that an option should be included to withhold funds permanently in response to deliberate evasion of these rules and that 100 percent of the Federal funds should be subject to sanctions.

Response

The legislative language does not support these suggestions and they have not been adopted.

Comment

A national interest group commented that the regulation fails to recognize the MPOs as having lead responsibility for the management systems and establishes a State dominated process. This commenter further stated "Authority and decision making should be a matter of agreement and appropriate delegation under these regulations, particularly in metropolitan areas, and not the sole domain of the state DOTs. In particular the regulation should explicitly recognize the ISTEA requirement that the Congestion Management System in Transportation Management Areas is to be developed as part of the metropolitan process."

Response

The ISTEA requires State development of the systems in cooperation with MPOs, not that MPOs have lead responsibility. Both the NPRM and the interim final rule indicate that cooperation with MPOs in metropolitan planning areas is required, that the roles and responsibilities of the involved agencies are to be mutually determined, and that States may enter agreements with MPOs or other agencies to implement the requirements. In addition, the regulations require that the CMS be part of the planning process in TMAs. These issues are discussed in more detail under the section-by-section analysis.

Comment

The same commenter stated that the management systems have inconsistent coverage and that limiting some to Federal-aid highways is not helpful, particularly in TMAs where the management systems should include all regionally significant facilities.

Response

The scope of coverage specified in both the NPRM and the interim final rule reflects the legislative requirements for the PMS and the BMS. The SMS covers all public roads and the other three systems cover facilities appropriate to the purpose of the management system regardless of jurisdictional classification. Additional facilities may be included at the option of the involved agencies. Since regionally significant facilities, by their nature, are higher order facilities, in most instances they are Federal-aid highways or other facilities that meet the coverage requirements of the non-highway oriented management systems and will, therefore, be covered.

Comment

One State DOT suggested that the phrase "shall be considered" in the language requiring consideration of the outputs of the management systems in the development of transportation plans and improvement programs needs to be defined. Further, this State DOT commented that the definition should clarify that "considered" does not mean "bound to," but that the State may determine the level of consideration based on the State's particular characteristics.

Response

The FHWA and the FTA do not believe that it would be appropriate, or practicable, to include a standard definition of "considered" for the specific reason cited by the commenter that the level of consideration needs to reflect a "State's particular characteristics." The FHWA and the FTA believe that the States, MPOs, and other involved agencies will give appropriate consideration to the results of the management systems as part of the statewide and metropolitan planning processes.

Comment

One State DOT commented that once a management system has been approved by the FHWA, the annual certification should be eliminated, subject to periodic review by the FHWA.

Response

The legislation requires annual State certifications. The regulations do not specifically require Federal approval of the systems. The Federal agencies will determine the acceptability of the systems based on their knowledge of the systems, documentation submitted with the State certifications, and periodic process reviews.

Comment

The NPRM proposed a procedure for a State to request Federal acceptance of existing management systems to be used to fulfill Federal management systems requirements. One MPO believes that the State should be required to make such a request in cooperation with affected MPOs and local agencies.

Response

This is a legitimate concern. The interim final rule has been clarified to indicate that the State request must reflect the views of affected agencies (e.g., MPOs, local officials, transit operators) and what actions, if any, will be taken to resolve any issues and to achieve the cooperation envisioned in the ISTEA.

Comment

A State DOT commented that the legislation does not require full implementation by the date of initial certification and, therefore, the regulations should not require full implementation by that date.

Response

The NPRM did not propose nor does the interim final rule require that the systems be fully operational by the date of the initial certification. The compliance schedule for each system is discussed below under the section-by-section analysis for the systems.

Comment

One commenter requested that definitions of "telework" and "telecommuting" be added.

Response

While telework and telecommuting may be viable congestion management strategies, the FHWA and the FTA do not believe that inclusion of definitions of these terms, as well as of other strategies cited in the regulations, is necessary.

Comment

A local agency commented that a committee for each system should be created at the State level with participation from local/county governments and other relevant transportation agencies.

Response

The mechanism for carrying out the cooperative process is to be determined jointly by the cooperating agencies.

Section-by-Section Analysis

Section 500.101 Purpose

This section states the purpose of this regulation. It indicates that subpart A includes requirements applicable to all of the systems and that additional requirements applicable to specific systems are in subparts B through H.

This section is unchanged from that proposed in the NPRM.

Section 500.103 Definitions

This section incorporates by reference the terms defined in 23 U.S.C. 101(a) and includes additional definitions for terms used in this part.

The phrase "Commonwealth of Puerto Rico" was added to the definition of "certifying official(s)" to be consistent with the reference to the mayor of the District of Columbia.

Several commenters suggested that definitions of the terms "cooperation," "coordination," and "consultation" be included and that the definitions be consistent with the metropolitan and statewide planning regulations. Many commenters expressed serious concern over the ability to develop and implement the systems if the term cooperation is defined to mean that concurrence of the many agencies involved was necessary. The FHWA and the FTA agree that "cooperation" should be used consistently in the planning and management and monitoring system rules and have defined it to mean "working together to achieve common goals or objectives." Definitions of coordination and consultation are not included since, as used in part 500, they are as defined in standard dictionaries.

One commenter suggested that the definition of "Federal-aid highways" should exclude isolated roads or that the phrase "eligible for assistance" be deleted. The definition in the NPRM is verbatim from 23 U.S.C. and has been retained unchanged in the interim final rule.

Minor revisions have been made to the definition of "Highway performance monitoring system" to clarify that it is a joint State/Federal system.

The definition of "life-cycle cost analysis" that was in § 500.303 of subpart C in the NPRM has been moved to § 500.103 in subpart A in the interim final rule because the term is also used in subpart B.

A definition of "management system" has been included to add consistency between subpart A and the subparts for each management system. The definition includes "generic elements" common to all of the management systems and the purpose statement that was in § 500.105(a) in the NPRM.

Revisions were made to the definitions "metropolitan planning area," "metropolitan planning organization," and "transportation management area" to make them consistent with the definitions in 23 CFR part 450.

Several commenters believed that the regulations for the specific systems were not consistent because some required performance measures and others did not. While some of the management systems are more physical facility oriented (e.g., PMS, BMS, and PTMS) and others (SMS, CMS, and IMS) are more "performance" oriented, they all have "performance measures" in the form of physical condition measures (e.g., the PTMS), goals and objectives (e.g., the SMS), or performance criteria (e.g., the CMS). To clarify this, "performance measures" has been defined to mean "operational characteristic, physical condition, or other appropriate parameters used as a benchmark to evaluate the adequacy of transportation facilities and estimate needed improvements."

The term "work plan" has been defined to mean "a written description of major activities necessary to develop, establish, and implement a management or monitoring system, including identification of responsibilities and target dates for completion of the major activities." This definition is intended to indicate the contents of the product that is required to be developed for each system by the beginning of fiscal year 1995 and submitted with the certification statements due by January 1, 1995.

Section 500.105 Development, Establishment and Implementation of the Systems

This section is a combination of § 500.105, Policy, and § 500.107, Coordination and evaluation of systems, in the NPRM. The purpose statement that was in § 500.105(a) in the NPRM was incorporated into the definition of management system as noted above. Language that specified that the systems are statewide and must cover the systems specified in the subpart for the particular system has been removed since the extent of coverage for each system is adequately covered in each subpart.

Section 500.105(b) in the NPRM has been redesignated as § 500.105(a). Many of the commenters, particularly State DOTs, believed that the NPRM did not allow flexibility for the systems to be tailored to meet their needs. The FHWA and the FTA always intended to permit such flexibility and stated in the NPRM that the systems may be tailored to meet State, regional, and local agency goals, procedures, and organizational structures. To clarify this point, the wording has been changed to state that the systems shall be tailored to meet the needs of these agencies. The phrase "be acceptable to the Federal agencies and shall" was deleted from the second sentence since it was redundant with wording in the last sentence. However, Federal review and acceptance is still required. Many State DOTs objected to this Federal review and acceptance of the systems as proposed in this paragraph. Since sanctions may be applied if the systems do not meet the requirements of this rule, Federal acceptance is necessary. It is expected that the FHWA and the FTA field staff will work closely with the States in development and establishment of the systems so that they will have first hand knowledge of the acceptability of the initial systems. Subsequent reviews would be on a periodic cycle (e.g., 2 systems each year over a 3 year period).

Section 500.105(b), proposed § 500.107(a) in the NPRM, requires that the States have procedures for coordination of the development, establishment and implementation of the systems. "Operation" of the systems has been added to this requirement since this term is now used throughout the regulation as a measure of implementation. The three specific requirements in the NPRM have been put in individual subparagraphs (1) through (3) for clarity. Several commenters expressed concern about the requirement that the procedures include the use of data bases with a common or coordinated reference system. One commenter believed that this would require the use of a geographic information system. The intent of this requirement was to avoid the duplicative collection of data that would be used by more than one system. It does not mandate a specific type of data base or reference system. The requirement has therefore been retained.

Section 500.105(c) is a combination of proposed §§ 500.105(c) and 500.107(b) in the NPRM which contained duplicative language. This paragraph includes the requirement that the systems be developed, established, and implemented in cooperation with MPOs and other affected agencies. A few commenters suggested that "local officials in non-metropolitan areas" be deleted as cooperating agencies since cooperation with local officials is not a legislative requirement as it is with MPOs. Since these local officials may be responsible for some of the systems on facilities under their jurisdiction, this requirement was retained. This is consistent with the involvement that local officials in metropolitan areas would have as a result of their representation on MPOs.

Several commenters expressed concern that it would be impossible to

develop and establish the systems in cooperation with the general public as proposed in § 500.105(c) in the NPRM. The FHWA and the FTA did not intend that a separate public involvement process be established to include the technical aspects of the development and establishment of the systems. The intent was that the public be informed of the assumptions (e.g., performance measures) and procedures underlying the systems and have the opportunity for involvement in the implementation of the results of the systems. Since the results of the management systems must be considered in developing metropolitan and statewide transportation plans and improvement programs, this information is expected to be made available through the public involvement requirements for the planning processes under 23 CFR part 450. To eliminate this misunderstanding, the phrase "and the public" has been deleted from the NPRM § 500.105(c).

Paragraph (d) requires that the CMS be part of the metropolitan planning process in TMAs in accordance with the provisions of 23 U.S.C. 134(i)(3) and 49 U.S.C. app. 1607(i)(3) and the requirements of 23 CFR part 450. Several commenters, mostly regional planning agencies or MPOs, believe that the regulation should specify that the MPOs have responsibility for developing and implementing the CMS in TMAs. The legislation does not mandate that a specific agency have this responsibility, only that the planning process in TMAs must include a CMS. The FHWA and the FTA believe that MPOs in TMAs should play a strong role in the CMS, but that the specific roles and responsibilities of the agencies involved in the CMS and planning process would be best determined by the involved agencies. Therefore, this requirement has not been changed, but has been made a separate paragraph for emphasis.

Section 500.105(e) in the interim final rule requires that the CMS, PTMS, and IMS be part of the metropolitan planning process in all metropolitan areas to the extent appropriate because of their close relationship to the planning process. This provision was part of § 500.107(c) in the NPRM. It has been made a separate paragraph in the interim final rule for emphasis. Many of the commenters agreed that these three systems are closely interrelated and, since they overlap extensively with the planning process, they should be part of that process. Other commenters believed that the decision should be left to the agencies involved. The FHWA and the FTA agree that these three systems should be part of the planning process in all metropolitan areas to the extent appropriate. As with the CMS in TMAs, discussed above, roles and responsibilities of the agencies involved need to be mutually determined and the staff and financial resources available to MPOs, particularly in smaller metropolitan areas, should be taken into account. This requirement, therefore, has been retained.

Section 500.105(f) was part of proposed § 500.107(c) in the NPRM. It provides that, in metropolitan planning areas that have more than one MPO and/or include more than one State, the establishment, development, and implementation of the CMS, PTMS, and IMS must be coordinated among the State(s) and MPO(s) to ensure compatibility of the systems and appropriate consideration of their results. This provision remains unchanged.

Section 500.105(g) (§ 500.105(c) in the NPRM) requires that the results of the management systems be considered in developing metropolitan and statewide transportation plans and improvement programs and in making project selection decisions. This requirement is unchanged from the NPRM. Many of the commenters requested clarification of the relationship of the management systems and the planning processes. This issue is discussed in detail above under the comments and responses to subpart A.

Section 500.105(h) (§ 500.107(d) in the NPRM) allows States and other affected agencies flexibility to mutually determine their roles and responsibilities, but the State is responsible for oversight and coordination. A few commenters believed that the regulations should specify roles and responsibilities. However, the vast majority of commenters on this issue strongly favored the flexibility allowed on this issue because of the variation of agency capability and organizational responsibility among States, MPOs, and other involved agencies. This requirement is unchanged from the NPRM.

Section 500.105(i) has been added to the interim final rule to clarify the relationship of the requirements for State management systems under 23 U.S.C. 303 and for management systems for Federal lands highways under 23 U.S.C. 204. Section 204(a) of title 23, U.S.C., requires the Secretary of Transportation, in cooperation with the Secretaries of the Interior and Agriculture, to develop safety, bridge, and pavement management systems for Federal lands highways. Since many Federal lands highways are public roads under State or local jurisdiction, such highways will be covered by the systems required under 23 U.S.C. 303. Other Federal lands highways are owned by Federal agencies. To avoid duplication of effort, this paragraph indicates that the management systems required under 23 U.S.C. 303 should be used to the extent appropriate to fulfill the requirement of 23 U.S.C. 204(a). It specifies that the State, the Federal agencies, and the agencies that own the roads shall cooperatively determine responsibility for coverage of Federal lands highways under their respective jurisdictional control and shall ensure that the results of the PMS, BMS, and SMS for Federal lands highways are available, as appropriate, for consideration in developing metropolitan and statewide transportation plans and improvement programs and are provided to the FHWA for use in developing Federal lands highway programs. In addition to this general provision, language has been added to subparts B through E and H of this regulation to address coverage of all Federally owned public roads as discussed in the section-by-section analysis of those subparts.

Section 500.105(j) (§ 500.107(e) in the NPRM) requires that each management system include appropriate means to evaluate the effectiveness of implemented actions and that the effectiveness of all of the systems combined be periodically evaluated, preferably as part of the planning processes.

Paragraph (e) of § 500.105 in the NPRM indicated that the FHWA's HPMS and the FTA's section 15 data would be used by the Federal agencies to meet their data needs and it encouraged States to also use these data bases for the management systems to the extent possible. The intent of this paragraph was to inform the States that the Federal agencies would rely on these data bases to meet their internal needs, that they would not be burdened with submission of additional data to the Federal agencies as part of the management systems, and that the States may be able to use these data bases for the systems. This paragraph was misinterpreted by some commenters who believed that it mandated use of the HPMS and FTA section 15 data. To avoid further misinterpretation, the paragraph has been deleted. However, to lessen duplication of effort, data bases established for the management systems should be able to provide information to be reported to the FHWA for the HPMS, in accordance with the HPMS Field

Manual,[2] as well as to provide data needed by other U.S. DOT agencies. For example, if certain data (such as, pavement serviceability ratings) to be collected for a management system are also needed for the HPMS, the data should be collected and maintained as part of the management system data base in a format that can also be used for the HPMS.

Section 500.107 Compliance

This section was § 500.109, Certification of implementation, in the NPRM. The title has been changed to "Compliance" since the section also addresses implementation of the traffic monitoring system for highways (TMS/H) which does not require a certification. The provisions for implementation of the TMS/H have been moved to a new § 500.107(e), as discussed below, to avoid confusion on the applicability of the certification requirement.

In accordance with the legislation, § 500.107 requires a State to certify that it is implementing each of the management systems in subparts B through G in Federal fiscal year 1995. The language has been changed to indicate that the State is to certify to the Secretary, not to the FHWA, to conform to the legislative language. The certification statement would be addressed to the Secretary, but it would be submitted to the FHWA Division Administrator for processing. It was proposed in the NPRM that a State would be considered to be implementing a system if the system was in operation in accordance with any phase-in criteria for the specific system. All of the systems did not include phase-in criteria in the NPRM. Each of the systems now have a compliance schedule provision. The wording in § 500.107(a), therefore, has been changed from "in accordance with any phase-in criteria" to "in accordance with the compliance schedule." As noted above in the discussion of comments under subpart A and below in the section-by-section analysis for the affected systems, the deadline for full operation of some of the systems has been extended. The last sentence of this paragraph that required the State's certification to describe the status of implementation for the entire State was reworded and moved to paragraph (c) of this section since paragraph (c) also included requirements for contents of the certification. A few commenters suggested that the State be allowed to rely on certifications from MPOs and other agencies that may be implementing subsystems of a management system. This is not precluded by the regulations, but the State would be responsible for ensuring the validity of such certifications. The status reported in the subsystem certifications would need to be included in the State's certification.

Revisions also have been made to paragraph (b) which requires that the FHWA be notified by September 30, 1994, of the title of the State's certifying official(s). The reference to notifying the FHWA of the name of the certifying official has been removed to reinforce the preference for designation of a position by title to avoid the need for redesignation when there is a change in personnel. The Commonwealth of Puerto Rico was added for clarity. Also for clarity, language was added to indicate that the notification is to be submitted to the FHWA Division Administrator; the NPRM had instructed States to submit the notification to the FHWA without specifying which office.

Paragraph (c) requires submission of the State's certification annually by January 1 each year, beginning January 1, 1995. It specifies the content of the certification, including the status of any subsystems. Language has been added to require that a copy of the workplan(s) that are to be prepared by October 1, 1994, in accordance with the provisions in the compliance schedules in each subpart, be included with the first certification(s) and that subsequent certifications include any significant revisions to the workplans. The NPRM specified that the certification include a discussion of planned corrective actions for any management system that is not under development or in operation in accordance with the compliance schedule for the system. This has been revised to specify "in accordance with the State's workplan" since the workplan will be used as the measure of compliance, until the date for full operation of a management system, in accordance with the requirements of the compliance schedule for the management system. The sentence that indicated that the information in the State certification statements will be used to prepare annual reports to the Congress on the status of implementation of the management systems has been deleted since it was informational only. The agencies will still use the information in the certification statements for the report to the Congress to the extent it is available.

Paragraph (d) indicates that the FHWA Division Office will provide copies of the certification(s) and any relevant supporting documentation to any other Federal agencies involved with a particular system. This provision is intended to lessen the burden that would be involved with submission of the certifications by the States to multiple Federal agencies. In response to suggestions from many commenters, language has been added to indicate that the FHWA will notify the State within 90 days of receipt whether the certification is acceptable.

As noted above, § 500.107(e) has been added to clarify that the certification requirement does not apply to the TMS/H. This paragraph specifies that a State shall be considered to be implementing the TMS/H, specified in subpart H, if the TMS/H is under development or in use in accordance with the compliance schedule in § 500.809. In addition, the State is required to submit the work plan for the TMS/H to the FHWA Division Administrator by January 1, 1995.

Section 500.109 Sanctions

This section was § 500.111 in the NPRM. It describes the provisions for withholding title 23, U.S.C., or Federal Transit Act funds for non-compliance and the procedures for restoration of withheld funds. Almost all States objected to withholding of their apportionments for non-compliance for systems or facilities over which they do not have jurisdictional control. Since title 23, U.S.C., funds are only apportioned to the States, there are no other agencies from which funds can be withheld. In recognition of this fact, both the NPRM and the interim final rule indicate that the Federal agencies will exercise discretion and target sanctions to correct deficiencies without penalizing agencies/areas that are in compliance.

Minor revisions in language have been made in each paragraph of § 500.109 in the interim final rule. In addition, the phrase "specified in subparts B through G" has been added to paragraph (a) to clarify that the sanction provisions apply only to the six management systems, and not the TMS/H which is in subpart H. Also in response to suggestions from several commenters, specific timeframes for State and FHWA actions have been added to paragraph (c). The time for a State to respond to notification that sanctions will be imposed has been changed from "a reasonable period of time" to "60 days from the date of notification." Similarly, the FHWA will notify the State if the proposed

[2] Highway Performance Monitoring System (HPMS) Field Manual for the Continuing Analytical and Statistical Data Base, DOT/FHWA, August 30, 1993, (FHWA Order M5600.1B). Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

corrective actions are acceptable within 60 days of receipt of the State's response.

Section 500.111 Funds for Development, Establishment, and Implementation of the Systems

This section was § 500.113 in the NPRM. It identifies the categories of title 23, U.S.C., and Federal Transit Act funds that may be used for development, establishment and implementation of the systems in accordance with legislative provisions for those funds. This section is unchanged from the NPRM.

Comments were received that the regulations prohibit or discourage the use of metropolitan planning or congestion mitigation and air quality improvement program (CMAQ) funds for management system purposes to ensure that MPOs have adequate resources for their core planning activities and that the amount of funds available for air quality planning is not lessened. Another commenter suggested that the list of funds that may be used be revised to include railroad-highway grade crossing (23 U.S.C. 130), hazard elimination (23 U.S.C. 152), and highway safety program (23 U.S.C. 402) funds.

The use of metropolitan planning or CMAQ funds is optional and is specifically allowed by title 23, U.S.C.; therefore, such use cannot be restricted by this regulation. Specific identification of funds for the railroad-highway grade crossing and hazard elimination programs is not necessary since such funds are a set-aside of STP funds. In addition if specifically listed, it would be implied that such funds could be used for all of the systems when the provisions of sections 130 and 152 of title 23, U.S.C., restrict their use to safety purposes. Neither 23 U.S.C. 303 nor 402 address the use of § 402 funds for the management systems and such use is, therefore, not listed in the regulation.

One State DOT recommended that paragraph (b) be changed to indicate that all of the categories of funds would be administered under the procedures for planning grants because more types of costs would be eligible. When any of the identified categories of funds are used for non-construction purposes, such as development, establishment, and implementation of these systems, the same types of costs would be eligible. However, other administrative requirements, such as programming of STP funds in transportation improvement programs or demonstration that use of CMAQ funds will benefit attainment of a national ambient air quality standard, vary and cannot be changed. Except for minor changes in language that were made for clarity, this section remains unchanged from the NPRM.

Section 500.113 Acceptance of Existing Management Systems

This section was § 500.115 in the NPRM. It includes procedures for State submission and Federal review and approval of a State request to accept an existing system in lieu of development of a new one. The last sentence of paragraph (b) has been rewritten for clarity without a change in substance. In response to comments from several agencies, paragraph (c) has been amended to require the FHWA to respond to a State's request within 90 days of receipt. Paragraph (d) in the NPRM indicated that the reason for submission of any requests for acceptance of existing systems within six months was to allow time for any needed modifications to be made by Federal fiscal year 1995. This language was not necessary and has been removed since each system has a compliance schedule that must be met, whether a new system is being developed or an existing one is being modified.

Subpart B—Pavement Management System

A total of 53 commenters responded to the PMS portion of the NPRM. The commenters consisted of 34 State agencies, 8 local agencies, 6 National/regional interest groups/associations, 4 regional planning agencies/MPOs, and 1 transit operator. The majority of the commenters wanted flexibility to design their systems. Several wanted technical clarification on various items. The areas of concern and the resulting changes to the rulemaking are discussed in the following paragraphs.

Summary of PMS Comments

Comment

The "standards" are too prescriptive and encompassing. States should have more flexibility, particularly on Federal-aid highways that are under local jurisdiction.

Response

The application of the "standards" has been changed to provide more flexibility to the States. The term "components" is used in the interim final rule instead of "standards." The components are divided into two groups: (1) the National Highway System (NHS) and (2) all Federal-aid highways that are not on the NHS. The "standards" that were included in the NPRM that applied to all Federal-aid highways now only apply to the NHS. For those Federal-aid highways that are not on the NHS, each State has the flexibility to adjust the NHS procedures to the degree needed to fit the characteristics of the State and local pavement networks. The decision to require specific components for the NHS is based on the importance that the Congress and the FHWA place on the NHS.

Comment

Some States provide State-aid to local agencies in lieu of Federal-aid. Consequently, the local agencies have no financial incentive to develop a PMS and, therefore, they should be exempted from having a PMS. Similarly, some States may not have legal authority to require another agency that has jurisdiction over Federal-aid highways to implement a PMS and the regulations should only make States responsible for limited oversight and reporting of the management systems for these roads.

Response

The ISTEA requires States to develop, establish, and implement a system for managing highway pavement of all Federal-aid highways. This will undoubtedly require cooperation and joint effort between the State and other agencies that have jurisdiction over some Federal-aid highways. Cooperative agreements between States and local jurisdictions have been widely used to extend the benefits of the Federal-aid program to local facilities, and can be used to extend PMS coverage to these facilities. Under the interim final rule, States have the flexibility to enter into agreements with other agencies to implement PMS subsystems, but the States have responsibility to oversee and report on the status of the PMS statewide. States and MPOs also have the responsibility to use PMS information as input in developing metropolitan and statewide transportation plans and improvement programs.

Comment

Many States began developing and implementing PMSs several years ago. To date, much work has been completed. It is not realistic, practical, or beneficial to reopen and revisit these completed phases of PMS in order to comply with the requirement to coordinate management systems with MPOs. The completed PMSs should be accepted and "grandfathered." The coordination requirement should only apply to new development and enhancements to existing PMSs.

Response

It is not the intent to reopen completed and accepted PMSs for review and coordination. However, development of new, or revision of existing, PMSs must be coordinated with MPOs and other affected agencies. In addition, the views of MPOs and other affected agencies need to be considered when acceptance of an existing system is requested.

Comment

"Maintenance" data is required under the project history and engineering analysis provisions of the NPRM. Since "maintenance" covers a broad range of activities, including minor repairs, such as pot hole patching, the word "major" should be put in front of the word "maintenance" to capture only the more significant types of maintenance.

Response

This recommendation was incorporated in the interim final rule by putting the word "preventive" in front of the word "maintenance."

Comment

Most local agencies are not equipped to perform skid tests.

Response

A PMS uses surface friction data that is obtained from a State's skid testing program. A PMS does not require any new or additional skid testing that goes beyond a State's normal skid testing program. For the non-NHS highways, the applicability of the PMS components is a State decision.

Comment

It is doubtful that many local county and city agencies have the resources to implement the simplest of PMSs. Many of these agencies do not even have the inclination or expertise to perform such elements as condition, performance, or investment analysis.

Response

The original provisions in the NPRM were changed in the interim final rule to provide States and local agencies the flexibility to determine the appropriate levels of complexity based on the network characteristics. It is anticipated that many local PMSs will be very basic and simple. In those instances where a local agency does not initially have the ability to implement the simplest of PMSs, other alternatives should be explored, such as, training, technical assistance, technical services, and consultant services.

Comment

Implementation should be phased in.

Response

It is agreed that a phase-in approach is needed and the interim final rule contains a compliance schedule provision. This schedule makes provisions for developing a statewide plan followed by implementing a PMS on the NHS and then on the non-NHS.

Comment

Concern was expressed over the proposed requirement for an annual evaluation and updating of procedures and calibration of relationships and criteria using PMS performance data. The annual update of pavement performance models is too frequent. To be more practical, these models should be updated at frequencies of about three to five years, allowing sufficient time to monitor and evaluate changes. Annual updates of recommended project repair strategies and timing would be cost-effective, but modifying pavement performance models that frequently would be neither practical nor effective.

Response

This concern is valid and clarification has been provided in the interim final rule. It was not the intent to annually recalibrate the PMS models, but to update any new engineering criteria, practices, or methodologies as appropriate. The interim final rule provides flexibility to each State to establish the frequency of the various analyses.

Comment

It is recognized that certain analyses are required to ensure that a PMS is functioning properly and meeting its intended goals. However, the requirements of the proposed rule go far beyond meeting this need when the rule requires each agency to have a research program.

Response

It is not the intent of this regulation to require analyses that go beyond the needs of a properly functioning PMS. The interim final rule provides the flexibility to establish components (for Federal-aid highways not on the NHS) that fit State and local conditions. State-of-the-art PMS technology is readily available through both the private and public sectors.

Comment

The final rule should require, not just consider, life-cycle cost evaluation.

Response

This change has been made and the interim final rule requires a life-cycle cost evaluation. This requirement is in keeping with the metropolitan and statewide planning provisions in 23 U.S.C. 134(f)(12) and 135(c)(20).

Comment

A PMS needs to define investment levels necessary to reverse deferred maintenance trends and maintain current conditions.

Response

The concern over deferred maintenance is addressed by the investment analysis provisions of the interim final rule. Under project-level analysis, the PMS must result in a recommended list of projects with recommended preservation treatments. It is generally understood that the analysis of preservation treatments should consider preventive maintenance which is referenced in two other provisions of the interim final rule.

Comment

PMS results should be linked to investment choices and programmed in an explicit manner.

Response

PMS results are linked in an explicit manner to investment choices when a PMS produces a prioritized list of recommended candidate projects.

Comment

We collect traffic data once every 5 or 10 years on some of the remote rural arterials (not on the connected highway system) because of high travel costs. The proposed rule would require a biennial review of these roads.

Response

This rule does not require a biennial review. Details on traffic data should be addressed by the State and the FHWA division office.

Comment

Consideration should be given to the existing PMS developed under previous Federal guidelines. Considerable time and money was expended in developing these systems. The regulation should allow maximum flexibility to allow the State to salvage as much as possible from existing systems.

Response

The intent of the NPRM and the interim final rule is to make the maximum utilization of the existing

PMSs, consistent with legislative requirements.

Comment

Extending the PMS to roads that are not on the State system results in including roads for which there is no recorded history. Development of missing historical data will be particularly onerous for regional and local governments. The regulation should require historical data only where it is available.

Response

It was not intended that missing historical data be developed. Historical data that exists is to be used in the PMS and new historical records should be established when project level analysis and design are performed.

Comment

A PMS should apply only to hard surfaced public (Federal-aid) highways. An unpaved road, even if meeting the definition of a Federal-aid highway, need not be included in the pavement management system. Although rudimentary, this should be stated in the rulemaking in order to minimize the possibility of misinterpretation.

Response

The policy provision that requires a PMS for all Federal-aid highways includes paved and unpaved roads. Although the characteristics, preservation treatments, and economic analysis of unpaved roads are different in many ways from those of paved roads, the components and design of PMSs can reflect the differences.

Comment

One State commented that the value of promoting the use of a PMS on all Federal-aid highways, regardless of jurisdiction is recognized and that, for the past several years, there has been a substantial effort to develop and implement PMSs at the regional and local levels throughout the State. Of concern to local agencies, however, is the implication in the policy statement that a single PMS is to be used by both State and local jurisdictions "subdivided into multiple network levels which would typically include the NHS and the various strata for the remainder of Federal highways * * * ." While the majority of PMSs being developed and implemented within the State employ the same basic concepts, they are not identical. Forcing all PMSs to be cast from a single mold would constitute a failure to recognize the vast differences between State and local transportation systems and would impose an unnecessary hardship upon local jurisdictions. In addition, such a decision would serve to truncate the vigorous research and experimentation that is currently underway to improve upon this emerging technology. The rule should state that there may be any number of separate PMSs under the responsibility of the State.

Response

State and local agencies have the flexibility to design PMSs to meet the needs of the local agencies. This regulation does not require that a "single" PMS be employed by both State and local jurisdictions nor do PMSs have to be "identical" or "cast from a single mold." The degree of uniformity and design of a PMS should be worked out between the State and local agencies. The interim final rule has been clarified to indicate that a State's PMS may include subsystems.

Comment

Since testing procedures to determine pavement serviceability rating (PSR) have been eliminated, it is not appropriate to require an estimate of remaining service life.

Response

The PMS components require the analysis of the remaining service life for the NHS. It can be analyzed based on ride, rutting, distress, composite condition index, and other criteria an agency deems appropriate. It is not limited to PSR.

Comment

The NPRM contained a provision in § 500.205(a), that stated, "each State shall have a PMS that covers rural arterial and urban principal arterial routes under its jurisdiction by January 13, 1993." Why is this in the NPRM since this compliance date has passed?

Response

This provision has been deleted because the purpose of FHWA's previous pavement management policy has been satisfied and the new provisions in the interim final rule better reflect the Federal interest in the NHS.

Section-by-Section Analysis

Section 500.201 Purpose

This section states the purpose of subpart B of this rulemaking and has been reworded to be consistent with the purpose statements for the other subparts and to indicate that the general requirements in subpart A apply to the PMS.

Section 500.203 PMS Definitions

This section incorporates the definitions of 23 U.S.C. 101(a) and 23 CFR 500.103 by reference and includes definitions of *pavement design* and *pavement management system*. Minor revisions were made to the definition of *pavement management system* to make it consistent with the definitions of the other systems.

Section 500.205 PMS General Requirements

This section was entitled "Policy" in the NPRM. The title has been changed to "PMS general requirements" in the interim final rule to better describe its content and to be consistent with section titles of the other management systems. Section 500.205 requires a State to have a PMS that meets the requirements set forth in § 500.207. Further, it defines the applicability of PMSs. Section 500.205(a) in the NPRM, which incorporated the January 13, 1993, compliance date for FHWA's previous pavement management policy, has been deleted from the interim final rule because the new provisions supersede the old policy. Section 500.207, entitled "Coordination," in the NPRM has been combined into this section. Although some commenters wanted to reduce the network coverage, the interim final rule specifies that all Federal-aid highways are to be covered by the State's PMS as required by the ISTEA, except for federally owned public roads. Coverage of federally owned public roads would be determined cooperatively by the FHWA and the agencies that own the roads.

Section 500.207 PMS Components

This section was § 500.209, Standards, in the NPRM. The title has been changed to "PMS components" to better describe its contents and to be consistent with the section titles of the other management systems. The section sets forth processes and procedures that must be included in a State PMS for the National Highway System (NHS).

This section has been changed from the NPRM to allow more flexibility. In the NPRM, the "standards" applied to all PMSs on all Federal-aid highways. In the interim final rule, paragraph (a) includes the components that are required for the NHS. Paragraph (b) provides flexibility to States to develop components for Federal-aid highways not on the NHS. This is a major change from the NPRM.

Section 500.209 PMS Compliance Schedule

This section sets forth specific dates and progress for implementation of the

PMS. The NPRM did not contain a separate compliance schedule section and proposed full compliance for all Federal-aid highways by January 1, 1995. Because of the numerous comments that a phase-in schedule should be allowed, particularly at the local level, the date for full compliance for the NHS is extended to October 1, 1995, and for non-NHS Federal-aid highways to October 1, 1997. This is a major change from the NPRM and should allow a reasonable amount of time to fully implement all phases of the PMSs.

Subpart C—Bridge Management System

A total of 45 commenters responded to the BMS portion of the NPRM. The commenters consisted of 36 State agencies, 5 National/regional interest groups/associations, 2 local agencies, and 2 regional planning agencies/MPOs. The majority of the commenters did not indicate serious disagreement with the proposed rule but many suggested minor changes or clarifications. A few expressed major concerns with some provisions. The areas of concern and the resulting changes to the rulemaking are discussed in the following paragraphs.

Summary of BMS Comments

Comment

Several States expressed the view that the BMS data requirements are too prescriptive, particularly for bridges on roads that are not Federal-aid highways. Changes were desired that would allow the States more flexibility to adjust elements that are not found to add value.

Response

The proposed data requirements for BMSs were contained in § 500.307(b) in the NPRM. This section is modified in the interim final rule to be less prescriptive regarding the data that States are required to collect. The interim final rule retains the NPRM requirement that States must have a data base and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS. The interim final rule deletes paragraphs (b)(1) through (b)(5) of § 500.307 in the NPRM, which listed minimum BMS data requirements. With this change, minimum data requirements will be determined by the State's own BMS objectives and the analyses required by § 500.307(c).

Comment

A number of commenters indicated that some elements of user costs would be difficult to implement. User costs associated with accidents were noted as being especially difficult to determine and perhaps unnecessary on low volume roads. Some commenters questioned the need to consider accident and user costs for all structures.

Response

The FHWA recognizes that States may have limited capability to estimate user costs, particularly on low traffic volume roads. However, as management systems are implemented, establishing linkages to information that would improve the ability to make better estimates should be a goal. Technological advancements, such as the ability to accurately spot the location of accidents will, with time, improve the quality of information and the ability to make estimates. If the available State data are not sufficiently comprehensive for estimating models, these might be augmented with information from other sources. Possible sources would be national studies on bridge-related accidents and individual State studies such as the work performed in North Carolina [3], which determined user costs for vehicular accidents and detours resulting from functional deficiencies. The NPRM definition of user costs is modified to clarify that accident costs may be measured on site or estimated through the use of models. If accident or other types of user costs are determined to be negligible on low volume roads, that fact should be reflected in the cost models.

Comment

Several commenters stated that short implementation deadlines are unrealistic and that they are being forced to adopt a currently developed system instead of developing their own system. Suggestions for additional time for implementation ranged from one year to an indefinite period.

Response

The proposed compliance schedule for BMS would have allowed 4 years from the effective date of the regulation for States to have a fully implemented system. This schedule was proposed based on the assumption that a State could take advantage of BMS developments that are presently available or well underway. The compliance schedule in the interim final rule extends the timeframe for full implementation of BMSs to October 1, 1998, or approximately one additional year. Assuming that data collection and software development can be accomplished concurrently, this additional time should be sufficient for a State to take an independent path in developing a BMS if it so chooses.

Comment

One State commented that the rule excessively involves bridges on the lower functional classes of highways for which the State does not have jurisdiction. Others indicated that a lesser degree of BMS sophistication should be allowed for locally-owned bridges.

Response

It is not expected that BMSs will require a major change in the level of State involvement in the management of bridges under local jurisdiction. Generally speaking, it would be the State's responsibility to: (1) Assure that appropriate data are provided to the State operated system, (2) evaluate the needs of locally owned bridges based on data analyses, (3) determine equitable distributions of Federal bridge funds, and (4) provide network analysis results to local bridge owners for their guidance. The network, in this case, is the bridge inventory of the local jurisdiction. Since the BMS is State-operated, the only advantage to reducing the level of sophistication for locally-owned bridges is to reduce data collection and reporting requirements. While this may result in savings initially, significant long-term savings are not likely in the FHWA's view. With the mechanism for collecting data already in place under the National Bridge Inspection Standards (NBIS), the additional time and effort involved to inspect bridges, and to record data in the format suitable for BMSs, is not significant. In addition to simplifying BMS operations, maintaining uniform data provides the flexibility to the State to define and analyze subsets of the bridge inventory irrespective of highway system designation or ownership. This flexibility is useful where the interests of organizations, such as MPOs, may involve differing highway systems, functional classes of highways, and bridge ownerships.

Comment

The concern was raised that local jurisdictions may not have the resources to meet Federal requirements for data collection and that this could jeopardize the Federal funds to the State.

[3] *Bridge Management Under a Level of Service Concept Providing Optimum Improvement Action, Time, and Budget Prediction*, FHWA/NC/88–004, September 1987. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

Response

The impact that the BMS may have on local agency resources is a legitimate concern. The main impact would likely be in providing the initial assessments of elements and conditions and in becoming familiar with new reporting requirements. Once the BMS is operational, the costs to local agencies, if any, should be small. To assist the transition, the FHWA will offer training courses for States which can be extended to include local agencies if a State chooses. The training will include a workshop on BMSs which will have an option for including bridge inspector training focusing on element-level inspection. In addition, an option for training focused on element-level inspection will be added to the Bridge Inspector Training Course now offered through the National Highway Institute. Both types of training should be available within the next year.

Comment

One State opposed the requirement in § 500.305(a) that the State establish agreements with local bridge owners. The State believes the requirement exceeds the word and intent of ISTEA and places the State in a cumbersome position of negotiating with all local bridge owners.

Response

The language in § 500.305(a) in the NPRM that the State shall cooperate and take the lead in establishing agreements with the MPOs in metropolitan areas and local bridge owners has been removed from this section since it was redundant with the requirements for cooperation in § 500.105, which apply to all of the systems.

Comment

A number of commenters questioned whether life-cycle cost analysis is desirable and cost-effective for a BMS. One State cited an article that appeared in the July 1992 issue of Civil Engineering magazine entitled Life-Cycle Cost Analysis Doesn't Work for Bridges. The authors contend that life-cycle cost analysis in bridge construction is not practical at this time.

Response

Life-cycle cost analysis is mentioned under § 500.307(c)(5) as one acceptable method for determining least-cost strategies for the maintenance, repair, and rehabilitation of bridge elements. In the FHWA's view, life-cycle cost analysis is useful in this application, given the data framework of a BMS. Life-cycle cost analysis has been used successfully in some BMS applications and it is the approach specified for the analytical procedures of the National Cooperative Highway Research Program BMS software. It should be noted that life-cycle cost analysis is not the only possibility for determining least-cost strategies. Alternative economic analysis approaches are available which might alleviate problems of uncertainty in traditional life-cycle cost analysis methods. The rulemaking allows for the use of alternative approaches. (It should be noted that the definition of life-cycle costs is moved from § 500.303 to § 500.103, Definitions, since the term is also used in subpart B for the PMS).

Comment

Several States suggested deleting § 500.307(d) in the NPRM which requires a system for monitoring the status of actions recommended by the BMS and for updating the BMS when actions are taken. The various comments were: (1) That the section could be deleted because the present NBIS will report that an action has occurred when the condition rating is changed, (2) that it is impractical to expect that local governments would regularly and consistently notify the State when actions recommended by the BMS have been taken, and (3) that the process is external to, and beyond the scope of the BMS.

Response

The primary purpose of proposed § 500.307(d) in the NPRM was to require feedback on the scope, cost, and condition changes resulting from maintenance, repair, and rehabilitation actions. This information is needed, mainly, for updating analytical models, such as those used in life-cycle costing, but it may also be used to monitor network conditions and responses to recommended actions. While bridge inspections provide condition information, they normally do not provide quantitative information on the scope and cost of actions; nor would they necessarily detect preventive maintenance performed on the bridge. The bridge inventory updating required by 23 CFR 650.311(b) does not provide the desired information either since it only reports modifications to the State's NBIS reports and not detailed scope of work and cost information.

The interim final rule is modified by adding § 500.307(c)(7) which requires the ability to use feedback from actions taken to update prediction and cost models. The provision is intended to allow the State the flexibility to track actions as needed for modelling purposes, but not to require such tracking on every bridge. For example, the State may find that the data reported on State-owned bridges provide a sufficiently large sample of actions to update models.

The intent of proposed § 500.307(d) in the NPRM is accomplished by the addition of § 500.307(c)(7) and by the general requirement under § 500.105(j) and that the effectiveness of management systems in enhancing transportation investment decisions must be evaluated periodically. Section 500.307(d) is, therefore, deleted and replaced with § 500.307(c)(7) in the interim final rule.

Comment

Several States commented that the interim final rule should clarify that the system is for decision support, to supplement current decision analysis, rather than replace it. One State pointed out sections of the proposed rule which, in its opinion, portray an objective to use BMS as more than a decision support tool, but to determine bridge policy only by computer data in lieu of agency experience.

Response

This rulemaking is not intended to replace current decision processes. Various wording changes have been made to remove any implication to that effect.

Comment

One State requested inclusion of the American Association of State Highway and Transportation Officials (AASHTO) Guidelines for Bridge Management Systems[4] in the BMS requirements.

Response

The AASHTO BMS Guidelines were not proposed for adoption mainly because AASHTO had not formally adopted them at the time the NPRM was prepared. However, the NPRM preamble (58 FR 12101), acknowledged them as representing "good practices," and the proposal itself incorporated many of the minimum requirements. Consideration of the adoption of the AASHTO BMS Guidelines as a requirement of the interim final rule was rejected because prior notification and opportunity for comment on these guidelines has not been provided.

Comment

One State commented that there must be flexibility and consideration of

[4] *AASHTO Guidelines for Bridge Management Systems*, 1992, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., suite 225, Washington, DC 20001. It is available for inspection as prescribed in 49 CFR part 7, appendix D.

existing BMS capabilities and that States should have flexibility to add elements as supporting subsystems.

Response

Under the provisions of § 500.113 in the interim final rule, a State may request acceptance by the Federal agencies of an existing management system, modified as necessary, in lieu of the development of a new system. Each request will require individual consideration.

Section-by-Section Analysis

Section 500.301 Purpose

This section states the purpose of subpart C of this rulemaking and is unchanged from that proposed in the NPRM, except language is added to indicate that the general requirements in subpart A apply to the BMS.

Section 500.303 BMS Definitions

The introductory paragraph of § 500.303 references the terms defined in 23 U.S.C. 101(a) and § 500.103 of this part. The remainder of the section provides a definition of terms that are used in describing BMS requirements that appear later in the rule. Comments on the definitions proposed in the NPRM were as follows:

One State commented that the wording of the NPRM definition of "Bridge management system (BMS)" addresses only the analysis aspects of the system and is not consistent with the other system definitions. The State suggested changing the first sentence of the definition to read: "A systematic process that provides decisionmakers information for making informed decisions on bridge program expenditures." Since the wording of the NPRM that a BMS is a decision support tool is consistent with the AASHTO BMS Guidelines and implies that the BMS is a process that provides decisionmakers information for making informed decisions, the suggestion was not adopted.

One State suggested revising the definition of "Bridge management system" by replacing the term "recommending projects" in the second sentence with "recommending programs" because network level analysis may not give very accurate project level decisions. In the context of the definition the two terms would seem to have similar meanings. A program could be a list of projects. The BMS network level analysis must be carried to a level of refinement that provides meaningful input to the planning and programming processes. The AASHTO Guidelines for Bridge Management Systems states that "A BMS aids in project level decisionmaking by providing an initial indication of the best action to take for each bridge in each budget period and the associated cost. While more detailed design and maintenance studies will clarify the specific nature of each project, overall the final mix of project level work should reflect the network level analysis."

The appropriate level of refinement in network level analysis would depend on the sophistication of those processes which may vary from State to State and from area to area within a State. Verification of the scope of work and the costs for short-listed "candidate" projects would likely be necessary at some point.

The wording of the definition of "Bridge management system" is modified by replacing the phrase "recommending projects and schedules within policy and budget constraints" in the second sentence with the phrase "recommending programs and schedules for implementation within policy and budget constraints."

One State commented that the term "determining optimal policies" in the second sentence of the definition of a BMS is vague and should be defined. The term is meant in the broadest sense to suggest that BMSs can assist in identifying the most satisfactory methods, practices, or procedures for designing, constructing and maintaining bridges.

Several States requested a further clarification of the term "elements." For example, it was not clear whether a bridge could have all of its girders as one element or each girder on a bridge as a separate element. One State asked if the interpretation of bridge "elements" is going to be left up to the individual States.

The definition of elements is meant to be flexible. In the example given, considering all girders of a bridge, or of a span, as one element is reasonable assuming that all of the modeling assumptions are satisfied. The assumptions might be that girders are composed of the same material, that all are likely to deteriorate at approximately the same rate, that all are measured using the same units, and that unit costs for maintenance, repair, and rehabilitation do not vary greatly. A subdivision of elements may be desirable to account for differences in the above.

Defining bridge elements and their condition states is an important step in the development of a BMS. Reliable and accurate prediction and cost models depend on unambiguous descriptions of actual distresses and condition state definitions that are recognizable by bridge inspectors generally by visual inspection, and that logically portray progressive stages of deterioration.

For guidance on this subject, the definitions developed by the States participating in the Pontis Beta test program are offered for consideration. To promote consistency and the ability to share information, the participating States defined a set of standard bridge element and condition descriptions called *C*ommonly *R*ecognized (CoRe) elements. The descriptions use engineering terminology that is not tied to any particular condition rating scale.

The FHWA is adopting the CoRe element definitions as a standard for converting BMS data to condition ratings for Items 58 (deck), 59 (superstructure), 60 (substructure), and 62 (culverts) of the National Bridge Inventory (NBI). CoRe element descriptions and draft NBI conversion procedures anticipated to be available in November 1993, may be obtained from the FHWA Office of Engineering, Bridge Division, in Washington, DC.

One State suggested that the definition of "Serviceability" be revised to read: "The degree to which a bridge provides service commensurate with its intended use." There appears to be no major difference between the suggested definition and the one provided in the NPRM. Since the current definition is consistent with the AASHTO guidelines, it is not changed in the interim final rule.

Section 500.305 BMS General Requirements

This section was titled "Policy" in the NPRM. The title is changed to "BMS general requirements" in the interim final rule to be consistent with section titles of the other management systems.

Section 500.305 requires States to have BMSs that meet the requirements set forth in § 500.307. Further, it defines the applicability of BMSs. Except for federally owned bridges, all bridges that are required to be inventoried and inspected under 23 CFR part 650, subpart C, the NBIS, shall be included. As noted under the section-by-section analysis for subpart A, a provision has been added to § 500.305 in the interim final rule that coverage of federally owned bridges on public roads be determined cooperatively by the FHWA and the agencies that own the bridges.

The remainder of § 500.305 states the requirements for State operation of a BMS for bridges on and off Federal-aid highways, excluding bridges on federally owned public roads. The requirements include maintaining a

centralized data base and implementing network analysis procedures that are capable of analyzing all bridges in the inventory or in any subset. The NPRM wording has been expanded to indicate that a subset includes inventories within any MPO jurisdiction or within a local agency jurisdiction. The purpose is to stress that the BMS is a State-operated system with the capability to separately consider the needs of bridges within any local jurisdiction. Local bridge owners may supplement the State BMS with one of their own, as indicated in the final sentence.

Section 500.307 BMS Components

This section was titled "Minimum standards" in the NPRM. The title of "BMS components" is used in the interim final rule for consistency with section titles of the other management systems. The section sets forth processes and procedures that must be included in a State BMS. These consist of data collection and maintenance, as described in § 500.307(b), and network level analysis and optimization, as described in § 500.307(c). Several changes to the NPRM were previously described under the section headed **Summary of BMS Comments.** They were: (1) Deletion of a list of data base items to be included in a State BMS, (2) addition of § 500.307(c)(7) in a list of required BMS capabilities, and (3) deletion of § 500.307(d). Other comments are discussed below.

One State requested that the word "computerized" be deleted in § 500.307(b) in reference to the data base and that the word "computer" be deleted in § 500.307(c) in reference to a model for applying network level analysis and optimization to the bridge inventory. The State indicated that these should be State decisions. The NPRM wording followed, and was consistent with, the AASHTO guidelines which state the need for a computerized data base and decision support tool. However, to allow flexibility, the word "computer" has been deleted in the first sentence of § 500.307(b). The beginning of § 500.307(c) also has been rewritten to eliminate the term "computer model." The new language requires a rational and systematic procedure for applying network level analysis and optimization to the bridge inventory and the ability to perform the items listed in § 500.307(b) (1) through (8).

One State asked if, in the preamble discussion of the definition of multiperiod optimization (58 FR 12101), the short- and long-term planning horizons mentioned were intended to be regulatory. The NPRM preamble mentioned typical budget periods of one or two years, and typical long-term planning cycles of 10 to 20 years. It is not the intent of the rulemaking to set values for periods used in an analysis. Those that were mentioned are intended as examples of what, in practice, might be typical.

One State commented that the wording of § 500.305(c)(5) in the NPRM, which proposed that the network model include a procedure to "determine least-cost maintenance, repair, and rehabilitation strategies," should be changed to "determine the greatest benefit from maintenance, repair, and rehabilitation strategies." The reason is that although an initial economic savings may be realized by supporting a least-cost technique, the long-term benefits may not be economically viable. The cost referred to in § 500.305(c)(5) is the total cost, which would include first costs plus the present value of future costs. With total costs considered, an objective to minimize costs or to maximize benefits should give similar results. Either approach is acceptable.

Section 500.309 BMS Compliance Schedule

This section sets forth the maximum time periods for implementing State BMSs. The requirements are: (1) By October 1, 1994, to have formally set BMS objectives and developed a work plan and schedule that demonstrates full operation and use of the BMS by October 1, 1998; (2) by October 1, 1995, to have the system design completed or underway in accordance with the State's work plan and full-scale data collection underway; and (3) by October 1, 1998, to have a fully operational BMS that results in identification of bridge needs for consideration in developing metropolitan and statewide transportation plans and improvement programs. The corresponding section in the NPRM allowed 4 years from the effective date of the regulation to have a fully operational system.

Subpart D—Highway Safety Management System

A total of 56 commenters responded to the SMS portion of the NPRM. The commenters consisted of 34 State agencies, 11 National/regional interest groups/associations, 4 local agencies, 3 regional planning agencies/MPOs, 3 private businesses or individuals, and 1 railroad company. In addition, a number of the responses which addressed issues associated with the other management systems also had implications to the SMS. Those comments on the SMS which applied to more than one management system are discussed in the general section of this preamble. Specific SMS comments are discussed individually or grouped for discussion purposes where a number of responses addressed a similar or common theme. Information obtained through the ANPRM and public workshops and the background information on the SMS as referenced in the NPRM on management systems published in the **Federal Register** dated March 2, 1993, were also considered in drafting this interim final rule. Background information is not repeated in this document.

This part of the rule does not contain any substantial changes in context from the NPRM. However, a number of changes are incorporated to provide uniformity among the management systems and to clarify or expand on specific points based on docket comments. These changes are addressed in the analysis of applicable sections below. The majority of the respondents felt that the NPRM for the SMS provided the proper approach and was consistent with the flexibility philosophy of the ISTEA. However, a number of State highway and transportation agencies and other commenters expressed concerns with the impact of the extent of roadway system coverage and the inclusion of the vehicle human safety elements.

Summary of SMS Comments

Comment

One respondent commented that the title for Highway Safety Management System appeared to restrict the system to highway traffic only and it should be multi-modal to conform with ISTEA.

Response

"Highway safety" is the title contained in the ISTEA legislation and, therefore, is not changed.

Comment

One respondent commented that the entire concept of the SMS needed to be rethought and two others provided suggestions to totally rewrite the rule. A number of comments were provided which would change regulatory requirements to guidance type language. While some respondents believed that the NPRM as drafted was too prescriptive, others believed that it was too vague and did not provide enough guidance and suggested specific items that should be included. These included such features as signing, pavement marking, work zone safety, road surface operational practices, inspection procedures, and operational and maintenance activities and practices. The majority of the respondents,

however, supported the language in the NPRM on most of these issues.

Response

Several changes were incorporated and are addressed in the section-by-section analysis. Guidance type information is not included in the regulation and will be provided in another form, such as through the FHWA's policy guidance procedures.

Comment

A number of respondents recommended incorporating the "Management Approach to Highway Safety"[5] into the rule.

Response

A great amount of material from that document is reflected in the rule.

Comment

One respondent commented that the rule should require preparation of a Highway Safety Impact Statement (HSIS) for each project and each operational and maintenance activity.

Response

Effective implementation of the SMS should preclude the need for an HSIS.

Comment

Several respondents commented that the FHWA should provide wide distribution of case studies of new concepts, approaches, and ideas.

Response

The FHWA is developing a technology sharing program to inform States of these types of activities.

Comment

Comments were provided that the rule needed to include detailed information on training, technical assistance, and guidelines that the agencies will be providing to the States.

Response

A National Highway Institute course on safety management systems is planned for late 1993. A National SMS Conference is planned for December 1993. Guidelines are proposed to be issued in early fiscal year 1994. States will be provided with more detailed information on these activities through other processes.

Comment

Several respondents suggested that the agencies provide funding for developing and implementing the SMS.

[5] *Management Approach to Highway Safety, A Compilation of Good Practices*, December 20, 1991. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

Response

A number of funding sources available for developing and implementing the SMS are identified in § 500.111 in the interim final rule.

Comment

Comments were made that it would be useful to indicate the categories of Federal funds that could be used for implementing SMS outputs.

Response

There are several categorical funding sources available to the States for implementing safety programs and projects. Needs identified through the SMS will be programmed for eligible categories of funds through the Highway Safety Plan (23 CFR 1204.4, Supp. B), the Motor Carrier Safety Assistance Program State Enforcement Plan (49 CFR part 350), and/or the metropolitan and statewide transportation planning processes.

Comment

Comments were provided that a full time safety engineer position should be established in each FHWA division office and that monitoring should be undertaken by these individuals to insure that the SMSs are actually being followed.

Response

The FHWA is conducting a review of its organizational requirements to focus on its changing role in response to the ISTEA. Many FHWA division offices currently have Safety engineers.

Comment

The establishment of a strategic research program on highway safety was recommended by one respondent.

Response

This particular point is not directly related to the regulation and is not reflected in the interim final rule.

Comment

A comment was provided that the concept of a safety audit should be introduced into the SMS.

Response

The FHWA is monitoring efforts of other countries in safety audits and will further evaluate this suggestion in the future.

Comment

Several comments were provided on the SMS overlapping, duplicating, conflicting with, or superseding the State Highway Administration 402 Safety Program (23 U.S.C. 402) and the 402 Safety Program in general.

Response

The SMS rule language provides requirements for a systems approach and complements the provisions of 23 U.S.C. 402. The agencies are unable to identify any conflicts between the SMS requirements and the 402 program.

Comment

Several comments were provided on the time and cost to establish a "common or coordinated reference system" required in § 500.107 in the NPRM (§ 500.105 in the interim final rule), particularly with respect to safety management.

Response

Resources and development time are two key items to be considered in deciding on the method and level of sophistication the State will use to meet this requirement. Coordinated or common reference systems provide the foundation for maximizing resources and achieving efficiency in operating and maintaining the highway transportation system. States may select the most appropriate approach to provide this integration consistent with their individual needs.

Section-by-Section Analysis

Section 500.401 Purpose

This section states the purpose of subpart D of this rule. The phrase "and continued operation" was added to emphasize the intent of the legislation that the SMS is to be an ongoing process. Reference to subpart A of this part was also added for clarification.

Section 500.403 SMS Definitions

The introductory paragraph of § 500.403 references the terms defined in 23 U.S.C. 101(a) and § 500.103 of this part. The remainder of the section provides a definition of terms that are used in describing SMS requirements that appear later in the rule. Each of the definitions under this part was modified.

The word "accidents" was changed to "crashes" in the definition of "Highway safety" to clarify terminology. Support was provided for the definition, however, it was suggested that the definition be further extended to explicitly consider bicycle transportation and pedestrian safety. The definition is broad as it applies to all modes of highway transportation and safety. Pedestrians and bicyclists are included and addressed specifically in other sections of the rule.

The definition of "Highway safety management system" was expanded to include wording from §§ 500.405(a) and

500.407(a) in the NPRM for clarification and to provide consistency with the definitions of the other management systems. Several respondents proposed that "all" be removed from the definition, or that "all reasonable" be substituted for "all," in the phrase "all opportunities to improve safety," since they believed that it is too encompassing and that it is unlikely that specialized expertise will exist at the agency or State level to address "all" opportunities. The language in the definition does not require particular staff expertise. In addition, "reasonable" is an inherent part of the SMS process. With proper application, the SMS will identify the needed expertise or actions, which would then be considered in the decisionmaking process.

One respondent commented that the language in the regulation contemplated maintenance as "roadway repair" rather than activities, such as snow removal and ice control. The definition of "operations" includes both types of maintenance activities.

Section 500.405 SMS General Requirements

This section has been retitled from "Policy" in the NPRM and restructured to provide uniformity with the other management system regulations. This section defines the applicability of the SMS and requires States to have SMSs that include the components in § 500.407. The section has been subdivided into paragraphs in the interim final rule for clarity.

Comments were provided that the policy section of the SMS should specifically emphasize the cooperation with local agencies. Such cooperation is applicable to all systems, as required in subpart A, and inclusion of duplicative language in the SMS is not necessary.

Comments were provided that communication, cooperation, and coordination should be required with pedestrian and bicycle planners and coordinators. In general, bicycle and pedestrian interests are represented by the planners and coordinators within a number of the agencies and groups designated in the rule for communication, cooperation, and coordination. The Federal agencies encourage States to provide appropriate opportunities for involvement of bicycle and pedestrian representatives.

This particular section, which addresses roadway system coverage and the comprehensive system approach, generated the greatest response, both in support and concern. Nearly every respondent except highway agencies supported the proposed roadway system coverage and comprehensiveness of the SMS. Many highway agencies also supported the concept of the system scope, but presented valid concerns on the implications of this broad system coverage. These concerns can be grouped into several categories: lack of resources, magnitude of effort, State laws affecting jurisdictional authority of agencies, overlap with other Federal requirements, and application of sanctions.

The Federal agencies recognize that availability of resources, both personnel and financial, is an ever-present problem in some agencies and that significant efforts may be needed to develop a comprehensive SMS that includes the three safety elements. While there never seems to be sufficient resources for highway transportation, the SMS and other management systems will lead to more efficient use of these limited resources. Virtually all funding sources (State, Federal, and local) can be used to fund the safety features called for by the SMS. In addition, the ISTEA allows States greater flexibility to decide how their Federal-aid resources will be used.

A number of States cited major implications in addressing institutional and legislative barriers, i.e. "home rule," as a result of the broad SMS comprehensiveness and roadway system coverage. The rationale for adopting the roadway system coverage and comprehensiveness was addressed in the NPRM and continues as a part of this rule. There was considerable support in the docket response to the NPRM for maintaining this position. The agencies did, however, incorporate changes based on responses to the NPRM to mediate issues and make implementation of the SMS more adaptable at the State and local level. These changes are reflected and discussed in §§ 500.105, 500.109, and 500.405(e).

Also with respect to extent of coverage and overlap with other Federal requirements, there were several comments related to the problems of a State's SMS covering Forest Service, National Park Service, other federally-owned, and private roads. As noted under the section-by-section analysis for subpart A, a provision has been added to § 500.405(a) in the interim final rule that coverage of federally owned public roads will be determined cooperatively by the State, the Federal agencies, and the agencies that own the roads. In response to the private road issue, the SMS is applicable to all public roads; therefore, if a road does not meet the definition of a public road found in 23 U.S.C. 101(a), it would not have to be a part of the State's SMS. Definitions in 23 U.S.C. 101(a) and § 500.103 are noted in § 500.403 as being applicable to this subpart.

With respect to the application of sanctions, § 500.111 indicates that the Federal agencies will target sanctions to correct identified deficiencies. This issue is addressed in more detail under the discussion of comments for subpart A above.

There were several comments that the coordination requirement created another level of bureaucracy, while others suggested establishing multi-agency or other coordinating groups to manage this function. It was also suggested that this coordination requirement would be too burdensome to the States because of the number of organizations that would be involved. It is not intended that coordination would be required with every entity for every effort. Coordination and communication mechanisms need to be established and the process put into effect as appropriate for the specific situation. Coordination can be, and is currently being, accomplished among the disciplines in a number of States without another bureaucratic layer. States may develop mechanisms consistent with local needs.

One respondent commented that "emergency response" needed to be clarified to indicate highway incidents. No change was made in the rule for emergency response, as the coordination and communication requirements for each of the organizations, agencies, and groups noted, are to be directed toward highway safety.

The language in § 500.405 in the NPRM regarding the applicability of the planning and project selection provisions of § 500.107 in the NPRM has been clarified and placed at the beginning of § 500.405(c) in the interim final rule.

Comments were provided that the requirement for States to assign a focal point for the SMS was inappropriately located in § 500.407(b)(3) and needed further clarification. Comments were provided to leave the focal point designation to the State, while several others suggested the focal point should be designated in the regulation. In response, this requirement has been moved to § 500.405(d) of the interim final rule with additional language provided for clarification. In addition, the Federal agencies believe that the States are in the best position to determine the proper location or position that should be designated as the focal point.

Section 500.407(d) in the NPRM has been redesignated in the interim final rule as § 500.407(e) for uniformity with

the other systems and it was modified to reflect comments to the docket. These changes on tailoring the system, better conform with language in § 500.105 and clarify the intent of this section to allow flexibility for addressing the comprehensiveness and roadway system coverage of the SMS. This section also addresses the concern of some respondents for a different level of analysis for local roads.

Educational information, driver licensing, and motor vehicle registration were submitted as important driver-oriented safety components of the SMS. These components are addressed in other regulations. They are also extremely important components of the SMS and, as such, would be addressed through the coordination process and in developing countermeasure strategies.

Comments were made that § 500.405 requires the linking of non-related data bases, such as emergency medical services, to highway safety, and requires extensive input from the private sector. These requirements have been retained in the interim final rule. Effective management and reduction of highway related injuries and fatalities require that responsible agencies direct their limited resources to receive maximum return on their investments. Highway safety involves many disciplines and the most effective application of resources needs to be maximized among these disciplines. This requires that data be shared or exchanged. The degree of sophistication of information coordination among these agencies or groups would be determined by the States and localities.

Section 500.407 SMS Components

This section has been retitled from "Program structure" in the NPRM and several changes have been made to address comments and provide consistency with the other management systems. This section sets forth processes and procedures that must be included in a State SMS.

There were comments about the subjectiveness of "totally" in the second sentence of paragraph (a), as it relates to safety being integrated into the decisionmaking process. "Totally" has been stricken from this sentence.

A number of respondents expressed concern over the use of the phrase "as a minimum" in the sentence "These plans, processes, procedures, and practices, shall incorporate as a minimum: * * *" in § 500.407(b) in the NPRM. "As a minimum" has been changed to "as appropriate" in § 500.407(a) in the interim final rule. All of the requirements listed under this paragraph may not be applicable to all of the five major areas.

One respondent suggested that there was inadequate recognition of operating and maintenance activities in paragraphs (b) and (e). These activities are an integral part of the SMS and are included throughout the regulation.

One respondent commented that establishment of goals to address both existing and anticipated safety problems in paragraph (a)(1) goes beyond a practical approach. It is recognized that resources must be applied to programs and projects that address existing problems. In the process of analyzing and implementing existing problems, potential hazardous problems may be revealed that can be prevented from developing. For example, an unsafe vehicle or roadway design may be detected and corrected prior to implementation.

One respondent commented that the time and cost to establish accountability for every position that could be construed to be involved in roadway safety would exceed the benefits. The federal agencies believe that the benefits would be commensurate with the effort involved. The language in the rule is directed toward units and positions carrying out safety responsibilities. Accountability is a basic management principle and the degree to which it is applied will be governed by the administrative and operational practices and needs of the organization.

Comments were received that it would be difficult and unnecessary for States to collect pedestrian information as reflected in paragraph (a)(4). There were also comments on the amount of pedestrian accident data some States collect. The intent of the language in the NPRM was for pedestrian data to be directed toward safety issues which would primarily focus on crash involvement. The need for pedestrian data beyond crash data would be determined by the agencies involved with the SMS. "Bicycles" has been added as a data requirement. As with other records required under this section, the States are only required to collect appropriate data which will enable them to identify problems and determine improvement needs.

A number of respondents commented on the need to emphasize data sharing and integration of data bases where feasible. Data sharing and/or data base integration are necessary to maximize resources. States should recognize this in determining how best to address their needs. Data sharing is included in paragraph (a)(4) and the feasibility of data base integration would be part of the decisionmaking process.

Several comments were provided on including a requirement for highway and road inventories, the need for a baseline inventory of highway conditions, and operating and maintenance policies. The language of paragraph (a)(4) requires information and data on "highways" necessary for problem identification and determination of improvement needs. Information that the State may need in this area may come from several sources in addition to and including an inventory. States are provided the flexibility to determine what data elements and sources are to be used in order to achieve the requirement objective. Identification of operating and maintenance policies fall under the requirements of having plans, processes, or procedures for addressing activities covered under the Operations definition in § 500.403.

Comments were also provided on the need for total accident costs, the characteristics of claims and settlements against the government resulting from highway crashes, and direct or actual savings attributable to accident reduction. The federal agencies agree that this may be useful information to some States in their decision processes but that it should not be a mandatory requirement because of the cost and effort that would be involved.

Several commenters stated that the data requirements in paragraph (a)(4) on the number of trains at highway-rail crossings were not realistic. These requirements correspond to regulations evolving from the 1966 Highway Safety Act. Part 924 of 23 CFR has required that States have a process for determining the relative hazard at railroad grade crossings, which includes the number of trains per day. This information is then part of the process for determining use of 23 U.S.C. 130 funds.

"Medical services" has replaced "emergency medical services" as a data requirement in paragraph (a)(4) in response to comments that emergency medical service data does not provide the complete chain of cost and other data required for assessing highway crash injuries. Emergency medical services data would still be an integral part of medical services data.

Comments were provided that without clear focus and definition, data collected will differ between regions and States. Federal data reporting requirements are contained in other regulations. The SMS must be a system that is of value to the States and, therefore, requirements will vary based on each State's identified needs. Data needs for the various systems should be

coordinated for multi-system use and where possible to meet any reporting requirements for other purposes. This, along with several comments on the massive efforts and cost associated with data for the systems, reenforces the need to allow States to tailor their efforts to address identified needs.

A number of comments were provided on the practicality of evaluation of "all" activities that relate to highway safety under paragraph (a)(6). The agencies agree that "all" is improper under the intent of the original language of the NPRM. "All" is thus removed from this sentence.

There was concern expressed on the amount of data required for evaluation of the effectiveness of highway safety performance in paragraph (a)(6). There were also questions as to how performance is to be defined. Will it be project specific or system wide? How long do you track performance? States only need to collect that data which they determine necessary to evaluate the effectiveness of specific programs or projects relative to their impact on safety and use of resources. Performance may be defined at the State level on a system wide or project specific basis, based on the project or program goal. Performance tracking would be conducted in accordance with the confidence level initially established for the evaluation.

One comment was provided that paragraph (b)(1) weakened the requirement for formalized process for coordination and communication as set forth in § 500.405. These are two distinct and different requirements that complement rather than compete.

One respondent noted that the rule should make clear that highway safety problems are not restricted to design/engineering hazards, but include operational practices or policy as well. Several respondents expressed concern that the five major program areas place too much emphasis on physical safety improvements and not enough on the driver or vehicle improvements. There was also concern that there are target groups not identified in § 500.407(b)(4) that can be addressed through driver-oriented countermeasures. Section 500.407(b)(2) includes identifying and correcting "highway safety problems, roadway locations and features * * *." The highway safety problem part of this requirement is primarily related to non-physical type countermeasures. However, improvement countermeasures identified under any of the requirements of paragraph (b)(2) may involve the identified target groups such as those noted in the response. Program or project improvements would then be incorporated into the State's HSP, MCSAP, or highway improvement plan as appropriate.

Comments were provided that railroad-highway grade crossings were specifically referenced in §§ 500.407(b)(2) and (b)(5), but not signs, pavement markings, and safety hardware. It was recommended that these be shown as roadway features. Section 500.407(b)(5) specifically addresses safety hardware as a component of the roadway system to be addressed. Section 500.407(b)(2) pertains to identifying and correcting safety problems, locations, and features. A countermeasure to correct a problem or location may include signing, pavement marking, or safety hardware. Earlier input into safety management suggested that railroad safety consideration needed to be included in the regulations. There are many individual components associated with the roadway and its environment, of which signs and markings are included as features. It was determined that specific designation of each feature was not necessary.

One comment suggested that "early consideration" in paragraph (b)(3) should be more specifically defined. Early consideration would vary as to a particular input point with specific programs and projects. The thrust of this requirement is that at the conceptional stage of programs, projects, policies, etc., safety implications and needs are identified and considered.

A comment was provided that the system should also explicitly consider the impacts of truck traffic and freight systems management on traffic safety. This is recognized as an inherent part of the SMS and commercial motor carriers are specifically noted in paragraph (b)(4). The impacts of truck traffic would be a consideration in all aspects of the system.

One responder suggested that the FHWA should promulgate standards that aid the special user groups identified in paragraph (b)(4). Specific standards for special needs or users are set forth or under development outside of this rule. These would be applied to the specific user groups as appropriate.

An additional paragraph was suggested under this section to clearly identify implementation of strategies, timeframe, and probable funding sources for each proposed SMS program. Each of the items in this suggestion are addressed in the other parts of this rule and in the planning regulations (23 CFR part 450) as appropriate.

Section 500.409 SMS Compliance Schedule

This section sets forth dates for implementing the SMS. The section has been added to the NPRM to provide the States flexibility in establishing realistic implementation. A number of comments were provided on the time required to develop and implement the SMS and the management systems in general. Several suggestions were provided on a phase-in approach. The agencies recognize the different issues that each State must address, particularly in the area of comprehensiveness of the SMS and, therefore, have included this section.

Subpart E—Traffic Congestion Management System

A total of 77 commenters responded to the CMS portion of the NPRM. The commenters consisted of 33 State agencies, 15 regional planning agencies/MPOs, 11 National/regional interest groups/associations, 8 local agencies, 5 transit operators, 2 railroad companies, 2 Federal agencies or officials, and 1 private business. The majority of commenters did not indicate serious disagreement with the proposed rule, but many suggested minor changes or clarifications. A few commenters expressed areas of major disagreement or concerns with some provisions. The areas of concern and the resulting changes to the rulemaking are discussed below.

Summary of CMS Comments

Comment

A national interest group stated that the CMS should not focus solely on highway levels of service, that the CMS must be developed with attention to all modes and all purposes of the ISTEA, and that the rule should acknowledge that ISTEA CMS requirement does not presume that mobility, air quality improvements, and highway congestion are incompatible.

Response

The FHWA and the FTA agree with these points and did not find anything in the NPRM that would be contrary to them. The interim final rule is consistent with these points.

Comment

Several commenters expressed the need for development of the CMS regulation to be coordinated with the development of the other management systems regulations. Also, there should be a consistent use of the word "cooperation."

Response

Development of the CMS regulation has been coordinated with development of the regulations for the other management systems. The definition of cooperation is discussed in the preamble for subpart A above.

Comment

Several commenters stated that the proposed compliance schedule for the minimum requirements on October 1, 1994, and for full operation of all CMSs by October 1, 1995, was unrealistic and should be revised to reflect delays in issuing the NPRM.

Response

The compliance schedule proposed in the NPRM has been revised as discussed in the section-by-section analysis for § 500.509 below.

Comment

Several commenters believed that the CMS regulation should provide more guidance on CMS data collection and system requirements. Commenters also stated that CMS data requirements were burdensome, costly, duplicative, and beyond the technical capability of many MPOs.

Response

The interim final rule maintains the overall approach of the NPRM which allows States, in cooperation with the MPOs, local governments, transit operators, and other cooperating agencies, to identify, develop, and implement data collection programs that fit their needs and address their specific levels of congestion. This approach allows the agencies involved to develop and implement a process that minimizes burden, cost, and duplication. The reference to the use of existing sources of data (such as, the HPMS and FTA Section 15 data) in § 500.507(b) is included to point out that these data sources are available. It is recognized that additional sources of data or new collection activities may need to be established and initiated to fulfill this requirement.

States, MPOs, local officials, transit operators, and other transportation officials mentioned in § 500.505(c) should cooperate in the collection of data. Pooling of resources by these agencies, in combination with Federal assistance, should result in implementation of a sound data collection program even when the technical capabilities of some of these agencies and the funds available to meet CMS data needs are limited.

Comment

Several commenters expressed concern that the NPRM too severely restricted the implementation of single-occupant-vehicle (SOV) projects and neglected the fact that SOV projects may be the most appropriate action to achieve the dual goals of improved mobility and air quality. Several commenters also stated that the analysis of strategies in nonattainment TMAs should be a comprehensive multimodal process that would include a logical packaging of appropriate operating, travel demand reduction, and capacity enhancing strategies. It was suggested that this process replace the sequential process described in § 500.509(b) in the NPRM that allows the incorporation of general purpose lanes only after demand management and operational management strategies have been fully analyzed and not found capable of meeting the projected travel demand.

Response

The FHWA and FTA recognize, that in some cases, addition of general purpose lanes may be an appropriate congestion management strategy. However, the ISTEA requires that consideration be given to strategies that reduce SOV travel and improve existing transportation system efficiency. Thus, in all areas, explicit consideration of SOV reduction strategies must be part of any CMS.

In all TMAs, the inclusion of travel demand reduction and operational management strategies is specifically required by the legislation. Furthermore, in TMAs that are nonattainment for carbon monoxide and/or ozone, while increases in SOV capacity may be warranted, an appropriate analysis of reasonable travel demand reduction and operational management strategies for the corridor in which the SOV facility is proposed must be conducted. If the demand cannot be reduced or met through operational strategies, including transit, an SOV capacity project of appropriate design concept and scope may be an appropriate solution. If this is the case, all reasonable strategies to manage the SOV facility must be incorporated into the proposed facility.

This does not require an "endless and exhaustive study of SOV alternatives that are clearly not applicable in certain cases" as was interpreted by several commenters. It does require explicit consideration and appropriate analysis of reasonable alternatives to increased SOV capacity. The FHWA and the FTA will be providing technical assistance and training on how this can be accomplished.

The FHWA and the FTA agree, particularly in areas with complex transportation systems, that congestion management should be analyzed in a comprehensive multimodal process that includes a logical packaging of appropriate travel demand reduction, operating, and capacity enhancement strategies. In general, the use of other strategies should be fully considered before the addition of general purpose lanes is considered. The rule is not intended to preclude such analyses; on the contrary, it is assumed that the full range of reasonable strategies, including land use, will be considered.

Comment

Several comments were made on the proposed list of strategies in § 500.507(d) in the NPRM. Several commenters interpreted this section to require extensive analysis of all of the suggested strategies, even if they were not applicable to the area under study. The list was also interpreted to be exhaustive and all-inclusive. Several commenters also pointed out that the list was roadway oriented due to the lack of specific reference to multimodal strategies, such as, bicycle and pedestrian facilities, public transit, paratransit, and commuter rail, and expressed concern that such strategies would not be considered in the CMS.

Response

It was not intended that the list be all-inclusive or that every strategy on the list would be fully analyzed. The list was intended to be an illustrative sample of traditional and non-traditional strategies that should be considered by the CMS in conjunction with the transportation planning process. The interim final rule clearly states that the listed strategies should be appropriately considered and that it is not all-inclusive.

The list of suggested strategies in the interim final rule has been expanded, as discussed in the section-by-section analysis below, to include multimodal strategies to clarify that such strategies may be appropriate. However, the States, MPOs, local governments, transit operators, and other transportation officials will need to determine whether monitoring of transit performance and operation and identification of transit strategies for improving transportation system performance will be part of the CMS or the IMS since the PTMS will only be responsible for transit capital assets.

Comment

A few commenters were concerned that land-use management strategies are

beyond the jurisdictional control of many State agencies and should not be included in the list of CMS strategies.

Response

As indicated above, the list of strategies, which included land-use management, was an illustrative sampling. It is not mandated that all strategies be analyzed or implemented in every case. However, land use is a critical consideration as recognized in the ISTEA and by those jurisdictions that have undertaken initiatives to address the interrelationship of land use and transportation through programs that coordinate land use and transportation strategy development.

If the CMS results in a determination that land use management is an appropriate strategy for effectively and efficiently dealing with an identified problem, the State, MPOs, and local officials will need to develop cooperative arrangements with the agencies that have jurisdiction over land use and development to implement the strategy.

Comment

Several commenters suggested that the CMS should be a tool to assist in the identification of potential strategy impacts rather than a method to identify potential strategies.

Response

The language in the ISTEA indicates that the CMS is to be more than a data collection exercise. For example, the ISTEA requires that the planning process in TMAs include the development of a CMS that provides for effective management of new and existing facilities through the use of travel demand reduction techniques and operational management strategies. In the interim final rule, an effective congestion management system includes both the identification of potential congestion management strategies and an analysis of their effectiveness in meeting the goals of individual congestion mitigation programs.

Section-by-Section Analysis

Section 500.501 Purpose

This section states the purpose of subpart E of this rulemaking and has been slightly reworded to be consistent with the purpose statements of the other management systems.

Section 500.503 CMS Definitions

The introductory paragraph of § 500.503 references the terms defined in 23 U.S.C. 101(a) and § 500.103 of this part. The remainder of the section defines "congestion" and "congestion management system."

The flexible definition of "congestion" in the NPRM was widely accepted by commenters. This definition recognizes that levels of acceptable congestion vary throughout the country and between metropolitan and non-metropolitan areas. It will be left to the States to determine, in a cooperative process with MPOs, local governments, transit operators, and other transportation officials, what the acceptable level of congestion is in their areas.

The reference to transportation system performance being acceptable to the traveling public has been deleted from the "congestion" definition since all citizens are affected by congestion, not just the traveling public.

Several commenters interpreted the definition of "congestion management system" in the NPRM to imply that the CMS was only a process of data collection since the NPRM definition stated that the CMS was a process that provided information. As discussed earlier, this was not the intent. The ISTEA requires that the needs identified by use of the CMS, and the other management systems, be considered in developing metropolitan and statewide transportation plans and improvement programs. The definition of congestion management system has been modified to include the identification of alternative strategies to alleviate congestion and to enhance the mobility of persons and goods. The definition now also describes the basic components of a CMS.

Section 500.505 CMS General Requirements

This section was entitled "Policy" in the NPRM. The title is changed to "CMS general requirements" in the interim final rule to be consistent with section titles of the other management systems.

Paragraph (a) provides an overall summary of the purpose of the CMS. There are a few changes from the NPRM. This section no longer states what a CMS will do—identify and assess—but states what the results of the CMS will be—identification and implementation of strategies.

The interim final rule clarifies that transportation facilities are to be covered through the CMS, PTMS, or IMS. If the decision is made to address congestion management for all transportation modes in the CMS, the CMS cannot be limited to strategies that focus on the movement of vehicles. The CMS must also assure that the efficient movement of people and goods is addressed and that consideration is given to other strategies, including parking management and bicycle and pedestrian facilities.

Section 500.505(a) in the interim final rule also incorporates and rewords the first sentence of § 500.507(a) in the NPRM that dealt with CMS coverage. Several commenters raised concerns that the CMS would require extensive coverage in rural areas or in areas not currently experiencing congestion. The extent of CMS coverage will depend on the different definitions of congestion that are agreed to throughout the State. Where it is determined that congestion does not exist and is not likely to occur, coverage can be limited to periodic verification of this determination. CMS efforts should be focused on those areas with existing congestion or with the likelihood that congestion will develop, regardless of whether that congestion occurs in metropolitan or non-metropolitan areas. The phrase "recurring or nonrecurring" has been removed in response to concerns on how areas with existing or potential "nonrecurring" congestion would be identified. However, since "nonrecurring" congestion due to incidents often accounts for most of the congestion in many areas, such congestion is still to be addressed by the CMS and strategies for dealing with "nonrecurring" congestion (e.g., incident management) are included in the list of strategies to be considered in § 500.507(c).

Congestion is not just a metropolitan area phenomenon. In many cases, congestion in non-metropolitan areas occurs for different reasons and at different times than in metropolitan areas. Hence, the strategies to be implemented to manage congestion and improve mobility in the non-metropolitan areas will probably differ from those in metropolitan areas. These strategies, which are critical to preserve the effectiveness and efficiency of the overall transportation system, will need to be evaluated and fully considered in the statewide planning process.

Also, to be consistent with changes in subparts A through D, a provision has been added to § 500.505(a) to indicate that States, the Federal agencies, and the agencies that own the facilities shall cooperate to manage congestion on federally owned facilities.

Section 500.509 in the NPRM, Single occupant vehicle capacity projects, has been incorporated into paragraphs (b) and (e) of § 500.505 in the interim final rule. Section 500.505(b) in the interim final rule retains the provision that consideration be given to strategies that reduce SOV travel and improve existing transportation efficiency in both

metropolitan and non-metropolitan areas. This part has been slightly reworded from § 500.509(a) in the NPRM to ensure that explicit consideration is given to the incorporation of appropriate features into any projects that provide for the addition of general purpose lanes. These features would facilitate future demand management and operational improvement strategies to maintain the functional integrity of those lanes.

Portions of § 500.507(a) in the NPRM, Area of Consideration, have been added to § 500.505(c) to make this part more consistent with the overall intent of § 500.505 which is to describe the general requirements. Paragraph (c) now ensures that the CMS identifies the extent of existing or potential congestion, and accurately reflects the cumulative effects of implemented strategies on transportation system performance. This provision has been further modified by requiring that the assessment of the level of current or potential congestion shall be made on a continuing basis and that the entire metropolitan planning area shall be included in TMAs that are nonattainment for ozone and/or carbon monoxide. Complete coverage in these TMAs is required because SOV projects in such areas must be based on a CMS.

In determining the area of coverage for the CMS, it must be recognized that congestion is a dynamic phenomenon that may be affected by, or have an impact on, physical improvements or areawide transportation policy decisions over a wide area that surrounds the location, corridor, or facility being treated. Therefore, to evaluate the total effectiveness of the implemented strategies, these affected areas must be included in the CMS coverage.

The determination of potential congestion will be based on the area's definition of congestion and the results of transportation forecasts. If population and land use changes are anticipated that could result in increased levels of travel which could ultimately result in congestion, the evaluation of strategies to manage the potential congestion would be warranted. Early recognition of the potential problem should lead to more effective solutions, including the timing, location, and design of proposed land use development and transportation facilities.

Paragraph (d) requires that the CMS be a part of the metropolitan planning process in TMAs. Several commenters were concerned that there is a lack of clarity in whether the State or the MPO has responsibility for the CMS in TMAs. While the ISTEA requires that the CMS be part of the metropolitan planning process in TMAs, it does not assign responsibilities to individual agencies. The FHWA and the FTA believe that the agencies involved are in the best position to cooperatively determine their capabilities and responsibilities; hence, the interim final rule for the CMS and the final rule for the metropolitan planning process require the involved agencies in all areas to mutually determine their roles and responsibilities.

Section 500.505(e) in the interim final rule contains the portion of § 500.509 in the NPRM applicable to SOV projects in nonattainment TMAs. The analysis requirements in the NPRM have been retained. However, the conditions for programming SOV projects have been removed since these provisions are included in § 450.320 in the final rule for metropolitan planning. These programming provisions were removed from the CMS interim final rule because it was determined that it was more appropriate to include such provisions in the metropolitan planning rule. This issue is discussed in more detail above in the response to comments on the CMS NPRM.

Section 500.505(f) requires that development of strategies as part of the CMS be coordinated with the process for developing transportation control measures of the State implementation plan in nonattainment areas to ensure that the need to improve air quality, as well as to alleviate congestion, is considered in the development of CMS strategies. The growing body of research is beginning to show that commonly held assumptions regarding the relationship between congestion and air quality may not be valid. Strategies that may relieve congestion may not have equal air quality benefits.

Section 500.505(g) requires coordination of development, establishment, and implementation of the CMS with that of the PTMS and IMS. Several comments were made that the CMS should be coordinated with the IMS as well as with the PTMS. The requirement for coordination with the IMS was inadvertently left out of the NPRM and has been added. It will be the responsibility of the States, in cooperation with MPOs, transit operators, and other affected agencies, to determine the coverage and applicability of the these three systems with regard to system performance. As discussed above, the FHWA and the FTA intend that the cooperating agencies determine what aspects of people and goods movement will be covered by each of these systems.

Section 500.507 CMS Components

This section was entitled "Management system structure" in the NPRM. The title of "CMS components" is used in the interim final rule for consistency with section titles of the other management systems. The section sets forth processes and procedures that must be included in the CMSs.

As mentioned in the discussion of § 500.505, most of paragraph (a) in the NPRM, "Area of consideration," was incorporated into § 500.505(c) in the interim final rule. The subject matter of the first sentence of paragraph (a) from the NPRM was reworded and incorporated into § 500.505(a). The remaining paragraphs of § 500.507 in the NPRM are still in this section, but have been redesignated due to the relocation of paragraph (a).

Section 500.507(a) in the interim final rule describes the need to define parameters to measure the extent of congestion and evaluate the effectiveness of congestion reduction and mobility enhancement strategies. A phrase has been added to recognize that since the expectations of the quality of system performance may vary between communities, the cooperating agencies have the flexibility to establish performance measures appropriate for their area. The wording of this paragraph in the interim final rule also emphasizes that the movement of people and goods shall be included in the performance measures.

The preamble to the NPRM provided a suggested list of performance measures: Delay per person delayed; delay per incident; delay due to construction; average travel time per trip; persons per hour on the facility or in a corridor; level of service (LOS); lane-miles over a specific LOS; vehicle-miles-of-travel (VMT) over a specific LOS; percent of VMT by functional class; VMT per lane-mile; delay per lane-mile; delay per VMT; delay per trip; or delay per vehicle. Several commenters suggested that this list also include performance measures that reference person movement and those measures applicable to multimodal systems, such as, transit. While some were already included, other examples of person movement performance measures include: number of persons using HOV lanes; proportion of persons congested or delayed; person hours of delay; and vehicle occupancy counts. Performance measures for transit facilities might include: Riders per vehicle-mile; riders per vehicle-hour; peak load factors; on-time performance; cost per rider; vehicle-hours per employee; vehicle-miles per employee;

and riders per employee. Examples of intermodal performance measures are included in subpart G of this rule.

These lists are not meant to be all-inclusive or mandates. They are offered as illustrative examples of performance measures that might be used. Performance measures should be applied where appropriate and as a function of the area, transportation facility, and type of congestion under consideration. The use of performance measures are to be established cooperatively by the States and affected MPOs, local officials, transit operators, and other transportation officials.

Section 500.507(b) in the interim final rule requires a continuous program of data collection and system monitoring. The extent of this program will be determined by the States in cooperation with MPOs, local officials, transit operators, and other transportation officials and shall be a function of the magnitude of congestion and the area's performance measures. In areas where congestion is not occurring, or is not expected to occur, data collection and monitoring may be limited to periodic verification that conditions have not changed. In areas where congestion is a significant problem, data collection and system monitoring activities must be continuous and provide feedback on the effectiveness of implemented strategies. Existing data sources should be used to the extent possible. The language in the NPRM that indicated if existing sources are not adequate, new sources need to be developed, was determined to be unnecessary and has been removed since this will inherently need to be done to implement an effective CMS.

Section 500.507(c) in the interim final rule states that traditional and non-traditional strategies shall be identified and evaluated based on established performance measures. Historically, strategies to alleviate congestion have centered around capital improvements, such as, construction of general purpose lanes. The emphasis now is on management strategies rather than capital projects. However, capital improvements, when applied under a program that utilizes all reasonable strategies to manage the facility effectively, can be a legitimate treatment to manage congestion; but before this decision can be made, non-capital strategies must be considered and appropriately analyzed. This list of strategies is not all-inclusive and is meant to be illustrative. The interim final rule has been rewritten to clearly state that the listed strategies must be appropriately considered and that combinations of strategies, as well as individual strategies, may be analyzed. Appropriate consideration may mean that some of these strategies are not applicable in certain areas, subareas, or corridors. Other strategies that may be applicable would require more consideration in order to reach a proper recommendation.

It was not intended that the list be highway focused; therefore, land use management and transit strategies are included. Under this rule, the CMS or the IMS will identify and analyze transit performance measures and operation and the PTMS will deal solely with transit capital assets, unless the involved agencies cooperatively decide that transit system performance will be part of the PTMS. To emphasize these points, non-highway oriented strategies in paragraphs (c)(4), (c)(5), and (c)(6) have been added to the suggested list and advanced public transit systems technology has been added to paragraph (c)(11). The agencies involved in the CMS are responsible for cooperatively determining which strategies would be appropriate for consideration and the extent of analysis necessary to select the most appropriate strategy, or combination of strategies for implementation.

Section 500.507(d) in the interim final rule describes the implementation of the strategies in § 500.507(c). The key to successful implementation is to clearly identify the strategy, determine the timeframe for implementation, identify funding and other resources, and determine responsibility for implementing the strategies.

Section 500.507(e) requires evaluation of the effectiveness of the implemented strategies. This will provide input into future decisionmaking activities by describing how well different strategies work under various scenarios.

As previously discussed, § 500.509, Single-occupant-vehicle capacity projects, in the NPRM has been incorporated into § 500.505 in the interim final rule.

Section 500.509 CMS Compliance Schedule

This section was § 500.511 in the NPRM. In response to comments, the compliance schedule has been extended. However, recognizing the serious air quality problems in TMAs that are nonattainment for carbon monoxide and/or ozone, the need to alleviate these problems, and to coordinate with the EPA's conformity regulation, CMSs in such nonattainment TMAs must be fully operational earlier than in other areas. By October 1, 1994, a work plan must be developed that shows how full implementation will be achieved, critical areas requiring analysis must be identified, and data collection activities must be initiated. States with TMAs that are nonattainment for carbon monoxide and/or ozone will be required to provide fully operational CMSs in those TMAs by October 1, 1995. This is the original date that was suggested in the NPRM for all CMSs. This date is retained for such nonattainment TMAs due to the critical need to quickly alleviate transportation related air pollution. All other CMSs must be fully operational by October 1, 1996.

Subpart F—Public Transportation Facilities and Equipment Management System

A total of 50 commenters responded to the PTMS portion of the NPRM. The commenters consisted of 30 State agencies, 4 regional planning agencies/MPOs, 7 National/regional interest groups/associations, 1 local agency, 6 transit operators, 1 railroad company, and 1 private individual. The major areas of concern and the resulting changes to the rulemaking are discussed below.

Summary of PTMS Comments

Comment

One significant issue raised which was common to some of the other management systems was the general roles and responsibilities of affected agencies. Most commenters praised the flexibility of the proposed PTMS rule, although some questioned the ultimate role of the State in the PTMS development and implementation process. Several commenters, predominantly State DOTs, suggested that the States be designated as the lead agency in the development of the PTMS.

Response

It is the intent of the FHWA and the FTA that the development of a PTMS be a cooperative, as defined in § 500.105, process between the State, MPOs, and local transit operators. Section 500.605 in the interim final rule requires cooperation among affected agencies in the development, establishment, and implementation of the PTMS. The States may, at their option, designate lead agencies and other agencies responsible for other aspects of the PTMS.

Comment

The most commented upon PTMS issue was the inclusion of Federal Transit Act sections 16 and 18 (49 U.S.C. app. 1612 and 1614) subrecipients in the PTMS. Many States, citing the undue burden of obtaining data from a set of subrecipients which may change from year to year, suggested

that sections 16 and 18 subrecipients be either exempted from PTMS coverage or be included only at the State's discretion.

Response

While the FHWA and the FTA recognize that such data collection activities may require significant resources, the infrequent pass-through of Federal funds to certain subrecipients is the very reason why such subrecipients must be included in the scope of the system. Only a comprehensive inventory of capital assets, as provided for by the PTMS, will allow States to identify and assess system needs and deficiencies, establish replacement schedules, and provide a basis for prioritizing the allocation of Federal funds in future years.

In an effort to accommodate these data collection requirements, § 500.609 in the interim final rule provides a compliance schedule which allows for the phase-in of asset inventories and condition identification.

Comment

A related issue that was raised in comments to the docket concerned the applicability of the PTMS to subcontracted services. A few commenters stated that the difficulty of collecting data on such service providers far outweighs the utility of such information.

Response

Section 500.605 in the interim final rule makes it clear that only contractors operating capital equipment funded under Federal Transit Act sections 3, 9, 16 and 18 (49 U.S.C. app. 1602, 1607a, 1612, and 1614) must be covered under the PTMS. While not requiring it, the FHWA and the FTA encourage States to include other contracted arrangements which play a significant role in the delivery of public transportation services.

Comment

Several commenters recommended that the final rule provide for some uniform data collection standards. Some of these commenters further suggested that the FTA publish a national summary of data generated by the PTMS. On the other hand, many more commenters supported the proposed rule's provision for allowing States to identify standards which best reflect State and local goals and objectives.

Response

The interim final rule retains the flexibility that allows the PTMS to meet the needs of individual States, rather than serving as a mechanism for national reporting. The FTA may consider, in the future, issuing uniform data collection measures and standards for reporting purposes; however, such standards would be dependent on any data needs identified through implementation of PTMSs that meet the requirements of this rule.

Comment

Another issue that generated many comments was the identification and evaluation of strategies and actions through the PTMS. It was noted that § 500.609(d) in the NPRM implied that specific strategies and projects were products of the PTMS, thus confusing the purpose of the PTMS with those of planning and programming activities.

Response

It has always been the intent that the PTMS provide information and develop strategies for input to the planning process. Evaluation of these strategies for inclusion in transportation plans and improvement programs would be done as part of the planning process. The FHWA and the FTA have clarified this process in §§ 500.607(c) and (d) in the interim final rule.

Section-by-Section Analysis

Section 500.601 Purpose

This section states that the purpose of subpart F is to establish guidelines for the development of a public transportation facilities and equipment management system in accordance with the provisions of 23 U.S.C. 303 and subpart A. The reference to subpart A has been added to emphasize the applicability of the general requirements of subpart A to the PTMS.

Section 500.603 PTMS Definitions

The definition of PTMS has been broadened somewhat from that proposed in the NPRM to identify the linkage between the PTMS and metropolitan and statewide planning processes. This relationship is further clarified in § 500.607(d).

A definition of "transit assets" has been added to the interim final rule to eliminate the need to repeat the items of capital equipment which are to be inventoried under the PTMS throughout the rule. A few commenters suggested that definitions be provided in the final rule for terms such as "equipment" and "facility". Such definitions have not been added so that States, in cooperation with FTA fund recipients and MPOs, have the flexibility to inventory assets at a level of detail appropriate to a given transit system. This is made more explicit in § 500.607(b)(1).

Section 500.605 PTMS General Requirements

The title of this section has been changed from "Policy" in the NPRM to be consistent with the other management systems. This section provides for the "cooperative" development and implementation of a PTMS and allows each State to determine roles and responsibilities of affected agencies in the inventorying of assets, collection of data, identification of condition measures, and monitoring of systems.

This section also establishes the extent of coverage of the PTMS. Several commenters noted the apparent ambiguity in § 500.609(a) in the NPRM which required identification of "transit operators receiving Federal funds" while other sections of the proposed rule specified inclusion of "Federal Transit Act sections 3, 9, 16, and 18 recipients and subrecipients". Section 500.605(a) in the interim final rule makes it clear that only recipients and subrecipients of Federal Transit Act sections 3, 9 (capital and operating), 16, and 18 funds, and not recipients of other Federal funds, are covered by the PTMS. In addition, subcontracted providers operating capital equipment funded under sections 3, 9, 16, and 18 are to be identified in the PTMS. While not required, the FHWA and the FTA further encourage States to identify and collect data from other transit service providers in order to have as comprehensive a PTMS as possible. Similarly, while only facilities, equipment, and rolling stock are required to be included, States are encouraged to inventory other assets when the collection of such data would help transit service providers assess system deficiencies and identify strategies to meet these needs.

Because of their interrelationship, § 500.605(d) requires that the development and implementation of the PTMS be coordinated with the development and implementation of the CMS and IMS to ensure that transit system performance is addressed as part of overall transportation system performance in a manner cooperatively determined by the involved agencies.

Section 500.607 PTMS Components

Consistent with the other management systems, the title of NPRM § 500.607 has changed to "PTMS components." The basic PTMS structure proposed under § 500.609 in the NPRM has been moved to this section and

significant changes have been made based on comments received.

Section 500.609(a) in the NPRM was clarified and moved to § 500.605(a). Section 500.607(a) in the interim final rule provides guidelines for the identification of condition measures. Consistent with the cooperative nature of the management systems, the development of such standards should give adequate consideration to the goals and objectives of the State, MPOs, and transit operators.

Section 500.607(b), "Data collection and system monitoring," in the interim final rule ties PTMS data collection activities to those of the CMS, IMS, and TMS/H but otherwise remains essentially unchanged from proposed § 500.607(c) in the NPRM. Section 500.607(b)(1) allows States, MPOs, and transit operators to cooperatively determine an appropriate level of detail for the collection of data.

As stated in the *Summary of PTMS Comments,* many commenters on the NPRM felt that proposed § 500.609(d), "Strategy and action identification and evaluation," of the NPRM did not adequately explain the linkage between the PTMS and the statewide and metropolitan planning processes. Most of the comments on this issue suggested that the final rule define the role of the PTMS as a mechanism to collect information for input into the planning process, which then evaluates these strategies. Section 500.607(d) in the interim final rule clarifies this linkage. Section 500.607(c) in the interim final rule, "Identification and evaluation of proposed strategies and projects," states that data collected as required under § 500.607(b), when evaluated by the identified measures and standards required by § 500.607(a), will lead to the determination of system needs, maintenance and replacement schedules, and estimated replacement costs. The intent of § 500.607(d) in the interim final rule, "Implementation of strategies and projects," is to evaluate the strategies and potential project alternatives identified by the PTMS for possible inclusion into appropriate transportation plans and improvement programs.

Section 500.609 PTMS Compliance Schedule

In order to phase-in the requirements set forth in this subpart, a three-stage implementation schedule has been added to the interim final rule. By October 1, 1994, a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the PTMS by October 1, 1996, must be adopted. By October 1, 1995, condition measures and data system structure must be established and data collection must be underway. By October 1, 1996, the PTMS must be fully operational and provide projects and programs for consideration in developing metropolitan and statewide transportation plans and improvement programs.

Subpart G—Intermodal Transportation Facilities and Systems Management System

A total of 55 commenters responded to the IMS portion of the NPRM. The commenters consisted of 29 State agencies, 9 National/regional interest groups/associations, 8 regional planning agencies/MPOs, 4 transit operators, 2 railroad companies, 2 businesses or individuals, and 1 local agency. The areas of concern and the resulting changes to the rulemaking are discussed below.

Summary of IMS Comments

Comment

Many of the commenters questioned the availability and useability of intermodal transportation data. Questions were raised concerning the lack of goods movement data on a local level and the proprietary nature of intermodal data. Several commenters indicated that the cost of collecting data and keeping it current would be burdensome.

Response

The data requirements for the IMS are identified in § 500.707(c) in the interim final rule. To allow flexibility in tailoring the IMS and to minimize the effort necessary for the collection of data, the interim final rule indicates that operational and physical characteristics information will be based on measures established cooperatively by State and local transportation agencies. The interim final rule provides the flexibility for States and local agencies to select and establish data bases that are not excessively cumbersome to create or maintain. Proprietary information is not required and existing public data sources could be used to meet the requirement for data collection and system monitoring. The interim final rule encourages States and local agencies to build on the relationship between public and private sector transportation providers.

Comment

Several commenters noted that the required data collection has no clear guidance on how it is to be used or its role in decisionmaking. Without a clear indication of the data uses, unnecessary data may be collected.

Response

The interim final rule provides the flexibility for the State and local agencies to determine the extent and type of data to be collected for the IMS. States and local agencies are strongly encouraged to identify their intermodal transportation issues and determine the type and level of data that are necessary to address these issues as part of their IMS.

Comment

Many of the commenters indicated that the IMS final rule should be flexible enough for each State to develop unique management systems to meet its individual needs.

Response

Section 500.707 in the interim final rule describes the IMS structure. The specified structure defines the minimum system necessary for meeting the intermodal requirements as described in 23 U.S.C. 303(e). However, within this structure, the scope and level of activity will be determined by the State and local transportation agencies to meet their unique needs in a scale appropriate for their transportation systems.

Comment

Several commenters expressed concern over the relationship of the IMS to the statewide and metropolitan planning processes required under title 23, U.S.C., and the Federal Transit Act. Some commenters noted that the structure of the proposed IMS suggests the development of a planning process that would supplant the statewide planning process.

Response

Because this concern was identified with the other management systems, it is discussed above under the summary of comments on subpart A.

Comment

A majority of commenters indicated that a phase-in schedule should be included in the final rule and the schedule should recognize the difficulty in meeting all the requirements of the IMS by Federal fiscal year 1995.

Response

Section 500.709, Compliance schedule, which has been added to the interim final rule, allows for a phase-in of the IMS as discussed under the section-by-section analysis.

Comment

Several commenters noted that the IMS addresses two diverse issues, freight and people movement. The suggestion was made that the proposed rule be divided into two distinct sections.

Response

Although the interim final rule covers both freight and people movement, the States have the flexibility of structuring the IMS to address the intermodal transportation issues of freight and people movement separately. The States may decide to include intermodal people movements within the CMS. If the CMS addresses intermodal people movements, the IMS should not duplicate these activities.

Comment

Several commenters recommended the phrase "to achieve the most efficient transportation movement * * *." be replaced with "improve the efficiency of transportation movement."

Response

Section 303(e) of title 23, U.S.C., requires the IMS to include methods for achieving the optimum yield from such systems and increasing the productivity in the State. The interim final rule was changed to reflect the statutory requirement.

Comment

Several States indicated that the IMS process could yield results that identify alternate transportation solutions that are not eligible for funding by the FHWA or the FTA.

Response

The IMS does not establish funding eligibility. Funding eligibility is established by the legislation for the different categories of funds. While the availability of funds to implement strategies will need to be addressed eventually, it should not be a deterrent to examining the full range of potential intermodal strategies.

Comment

One State indicated that performance measures should be consistent across State lines for interstate facilities. A second State indicated that it was impractical to develop one set of performance measures.

Response

Due to the great diversity of transportation needs among the States, the State and local transportation agencies, in coordination with private transportation providers, will need to establish their own performance measures. When establishing performance measures for interstate facilities, coordination among the affected States and MPOs should be established to ensure compatibility. Interstate and international IMS coordination issues should be brought to the attention of the U.S. DOT.

Comment

Several commenters indicated that the strategies listed in § 500.707(e) are missing key elements: Energy efficiency, less polluting technologies, innovative bicycle parking, speed humps, and real time passenger information systems.

Response

The IMS regulation requires the evaluation of innovative technologies where appropriate for improving intermodal efficiency. The regulation does not limit the technology to be evaluated but provides the flexibility for the States to determine which technologies are appropriate for their transportation system. Strategies such as speed humps, innovative bicycle parking, and real time passenger information systems may be relevant strategies to be considered as part of either the IMS or the CMS.

Comment

One State commented that the regulation should not mandate neighboring State coordination. Instead, States should be allowed to develop mutual coordination agreements.

Response

For a State's intermodal transportation system to be efficient, the system must be compatible with its neighboring States' transportation systems. The regulation requires that establishment and implementation of the IMS be coordinated among the States and MPOs. The IMS interim final rule allows the States to develop mutual coordination agreements.

Comment

Several comments were received on coordination of data collection programs with the programs of U.S. DOT. The commenters indicated that the collection of data for the U.S. DOT should not be mandated.

Response

The ISTEA requires the U.S. DOT to collect intermodal transportation data. The IMS final regulation recognizes that the collection of intermodal data is a U.S. DOT mandate under section 5002 of the ISTEA. The coordination of the States' data collection programs with the U.S. DOT data program is not a mandate for the States to collect specific intermodal data required by the ISTEA. The State and local agency prerogative for determining the level and type of data needed for their IMS remains. However, coordination with the U.S. DOT program will result in a more efficient data collection effort at the Federal, State, and local levels. The IMS interim final rule was changed to eliminate confusion concerning data collection responsibilities.

Section-by-Section Analysis

Section 500.701 Purpose

This section states the purpose of subpart G of this rulemaking and is unchanged from that proposed in the NPRM except language is added to indicate that the general requirements in subpart A apply to the IMS.

Section 500.703 IMS Definitions

The introductory paragraph of § 500.703 references the terms defined in 23 U.S.C. 101(a) and § 500.103 of this part. To insure consistency with the other management systems, a definition was added for "intermodal management system." The remainder of the section defines the terms intermodal facility and intermodal system.

Several commenters wanted clarification that the definitions of intermodal facility and intermodal system included both public and private infrastructure. The IMS system should include all facilities, both public and private, necessary to establish an efficient intermodal transportation system. An effective IMS must consider private sector issues. Many capital decisions affecting transportation facilities and systems are made by the private sector. Government policies and programs can also have a powerful impact on private sector operations and decisionmaking.

One commenter indicated that the term "intercity" should be added to the type of trips listed that are served by intermodal transportation facilities. Intermodal facilities do serve intercity trips; however, the NPRM listed trips served as intrastate, interstate, and international, all of which include intercity travel. Therefore, the term "intercity trips" was not added since it would be redundant.

The comment was made by a State that the term "highway element" was too broad and encompassing. Clarification to the term "highway element" was added by modifying the term to read "highway elements providing intermodal terminal access."

The definition of intermodal facilities was also modified in response to several

comments by replacing truck terminals with the term major truck terminals. This change will provide consistency with § 500.707 which identifies major truck terminals as part of the intermodal transportation system.

Section 500.705 IMS General Requirements

This section was entitled "Policy" in the NPRM. The title is changed to "IMS general requirements" in the interim final rule to be consistent with the section titles for the other management systems. Section 500.705 requires States to develop, establish, and implement, on a continuous basis an IMS that meets the requirements set forth in § 500.707. Further, it defines the issues that shall be addressed by the IMS and requires coordination and integration with metropolitan and statewide transportation planning and the other management systems.

Several commenters suggested that transit providers be changed to transportation providers. The interim final rule was modified to indicate that coordination and cooperation should take place between planners, users, and transportation providers.

Comments were made concerning the proposed requirement to achieve the most efficient transportation movement. In order to meet the intent of the ISTEA, the interim final rule was modified and uses the statutory language of achieving the optimum yield from the intermodal transportation system.

Section 500.707 IMS Components

This section was entitled "Management system structure" in the NPRM. The title is changed to "IMS components" in the interim final rule to be consistent with the section titles of the other management systems. This section sets forth processes and procedures that must be included in a State IMS and requires coordination among the States and MPOs. The processes and procedures consist of identification of intermodal facilities and performance measures, data collection and system monitoring, performance evaluation, and identification of strategies and actions. Also the expected results of an IMS are described.

In order to maintain consistency with the other subparts, § 500.707(b) was retitled performance measures. Several commenters were concerned that an IMS should not establish standards since the expectation of service will vary between communities and private industry. The interim final rule requires the development of performance measures rather than efficiency measures and performance standards.

Several commenters interpreted the U.S. DOT's data collection requirements discussed in § 500.707(c) in the NPRM as data collection requirements for the States. As discussed above under the *Summary of General IMS Comments*, the intent was to foster coordination of the data needs of the U.S. DOT and of the States to minimize duplication of effort. Since this was not a requirement, the language has been removed from the interim final rule.

A State DOT indicated that under § 500.707(c) the base year inventory should consist of the physical and operating characteristics rather than the physical condition and operational characteristics. Section 500.707(c) was changed and the base year inventory will include data for physical and operating characteristics. This change provides consistency with the remaining portion of the section.

Several commenters stated that high speed rail, maglev systems, and just-in-time delivery evaluations should not be required as part of the IMS. Section 303(e) of title 23, U.S.C., requires the intermodal management system to include methods for increasing the use of advanced technologies, and methods to encourage the use of innovative marketing techniques, such as just-in-time deliveries. The NPRM used high speed rail and maglev as examples of advanced technology that may be evaluated where appropriate. The reference to maglev has been removed from the interim final rule, but high speed rail has been retained because of its greater potential for implementation. Just-in-time delivery has been retained because it is specifically cited in the legislation. Flexibility is provided in the final regulation by requiring, as appropriate for the individual State or region, evaluation of innovative technology and encouragement of innovative marketing techniques.

Section 500.707(f), "Implementation," in the NPRM was in effect a summary of the expected end results of the IMS. The substance of this paragraph has been incorporated into § 500.709, IMS compliance schedule, in the interim final rule.

Section 500.709 IMS Compliance Schedule

This section, which has been added to the interim final rule, sets forth the maximum time periods for implementing State IMSs. The FHWA and the FTA recognize that the development, establishment, and implementation of an IMS is a new requirement. The operation of an IMS will be a continuous process of refinement and improvement. As a minimum, the States are expected to have implemented the IMS elements identified in § 500.707 by October 1, 1995. The IMS must provide input to statewide and metropolitan area transportation plans, improvement programs, and project selection processes by October 1, 1996.

Subpart H—Traffic Monitoring System for Highways

Paragraph (b) of 23 U.S.C. 303 indicates that the traffic monitoring system is for both highways and public transportation facilities and equipment. Because of the special monitoring needs of each of these components, the NPRM and the interim final rule indicate that separate monitoring systems should be developed for highways and for non-highway public transportation facilities and equipment. Subpart H of the current rulemaking concerns the traffic monitoring system for highways (TMS/H) including public transportation on public roads and highways. Guidance on traffic monitoring for non-highway public transportation facilities and equipment is included in subpart F of this interim final rule.

A total of 38 commenters responded to the TMS/H portion of the NPRM. The commenters consisted of 28 State agencies, 5 National/regional interest groups/associations, 2 transit operators, 2 regional planning agencies/MPOs, and 1 local agency. The majority of commenters did not indicate serious disagreement with the proposed rule but many suggested minor changes or clarifications. A few expressed areas of major disagreement or concern with some provisions. The areas of concern and the resulting changes to the rulemaking are discussed below.

Summary of TMS/H Comments

Comment

A number of commenters were of the opinion that development of regulatory material for a traffic monitoring system in advance of the development of the six management systems was premature. These commenters felt that since the traffic monitoring system and the management systems are in similar sections of both the law and proposed regulations, the traffic monitoring system is intended to serve only the management systems.

Response

Section 500.801 in the NPRM is reflected in § 500.805 in the interim final rule and both enumerate various uses of traffic data that would be

supported by a traffic monitoring system. These uses range from individual project design to national U.S. DOT studies. The management systems are only one of seven identified uses. Recognizing that the needs for traffic data will continue to evolve, both the proposed and interim final rule look to the data users both within and outside of government, as well as users at various levels of government, to identify their traffic data needs. Every attempt has been made to assure that the traffic monitoring systems that are developed as a result of this rule will emphasize the particular data needs within each State while requiring only the most critical data in support of national programs.

Comment

The NPRM discussed precision from the standpoint of the need to meet the needs of the data user in § 500.805(b)(1) and to have data collection equipment that met certain objective criteria in § 500.805(b)(5)(i). A number of commenters disagreed with setting such criteria.

Response

Section 500.807(b) in the interim final rule continues to look to the data user to identify precision requirements, but § 500.807(f)(1) removes any reference to a fixed set of criteria or testing cycle to be met by the equipment used for traffic data collection. The interim final rule calls for the State, in cooperation with the data users, to develop criteria appropriate to the State's needs.

Comment

A large number of the commenters identified the need for a longer period in which to fully implement a traffic monitoring system from that called for in § 500.805(a) in the NPRM.

Response

This change has been made in § 500.809. The interim final rule emphasizes the near term need for a plan of implementation for a TMS/H with the next phase of this implementation being focused on the principal arterial system (or the National Highway System when it is adopted by the Congress) and the final phase covering the application of the TMS/H to all other highways covered by the rule.

Comment

Section 500.805(b)(4) in the NPRM required the collection of vehicle occupancy data. Some commenters felt that the requirement should be limited to specific systems or areas of the State.

Response

Section 500.807(e) in the interim final rule requires each State to determine, cooperatively with the users of the data, the level of vehicle occupancy data gathering needed to be responsive to the various uses of traffic data identified in the rule. The interim final rule requires that the traffic data collection program manager and the data users determine the most appropriate method of collecting these data. A number of commenters incorrectly inferred that roadside surveys were the only appropriate method of collecting this type of data. Such surveys are not always the most appropriate or effective occupancy data collection method. The interim final rule clearly indicates that the States are free to use any method that is acceptable to the data collection organization, the data users, and to the FHWA. Further, the FHWA encourages that existing programs that collect vehicle occupancy data be used whenever possible. The data collectors and users are also free to determine the most appropriate geographic scope for the collection of occupancy data including statewide to site specific depending on the needs of the data user. One respondent felt that vehicle occupancy data should be a part of the CMS, but the utility of occupancy data beyond that of congestion management makes the TMS/H the most appropriate source for occupancy data as well as any other traffic data that has multiple uses.

Comment

Various commenters felt that the requirement in § 500.805(b)(4) in the NPRM that vehicle occupancy data be collected on a three-year cycle was too stringent.

Response

In § 500.807(e) in the interim final rule, collection of vehicle occupancy data, is related to the need to refresh existing data based on an evaluation of the existing data at three-year intervals. This change allows the data collection program manager flexibility in structuring the program and focusing resources.

Comment

A significant data initiative under § 500.805(b)(3)(ii) in the NPRM was the collection of vehicle classification data on the NHS. Certain commenters felt that the NPRM was too arbitrary in the identification of monitoring sites and in determining the intensity of monitoring that would be expected.

Response

In § 500.807(d)(2) in the interim final rule, the expected level of monitoring is reduced from that proposed in the NPRM and the data collection program manager is allowed broader latitude in determining when data collection is warranted. As in the NPRM, the interim final rule requires that vehicle classification data be collected on a three-year cycle on the NHS, but the definition of the data collection locations has been made less stringent and the recognition that data collected during a single monitoring session may be descriptive of a number of related locations is reflected. These various changes will reduce the potential data collection burden in both rural and urban areas. The interim final rule has also been amended to indicate that, until the NHS is approved by the Congress, this vehicle classification activity will apply to the system of principal arterials.

Comment

A number of commenters noted that strict use of functional classification of highways specified in § 500.805(b)(7) in the NPRM may not be the most appropriate method of structuring the TMS/H within each State.

Response

Recognizing that there may be valid administrative or statistical reasons for using highway groupings other than functional classification, § 500.807(h) in the interim final rule avoids requiring the structuring of the data collection program strictly by functional classification of highways.

Comment

Section 500.805(b)(2) in the NPRM identified the need for a continuous monitoring program as part of a TMS/H. The NPRM treated the continuous collection of vehicle classification and vehicle weight data as being in support of the estimation of average annual conditions of vehicle classification and vehicle weight at individual highway locations. Recognizing that development of such estimates of average annual conditions of vehicle classification and vehicle weight was outside the scope or beyond the needs of many State traffic data collection programs, § 500.805(b)(3) in the NPRM allowed the reporting of other than annual average estimates if such estimates were clearly identified as not being annual averages.

Response

Some commenter responses focused on the NPRM's call for continuous vehicle classification and weight

monitoring without recognizing that if this was not done, an alternative process was available to estimate vehicle classification and weight data. Section 500.807(c) in the interim final rule encourages the use of continuous vehicle classification or weighing as appropriate within each State's data collection program, but does not require the adjustment of short term vehicle classification and weighing data to estimates of average annual conditions on the basis of continuous vehicle classification and weighing. Section 500.807(d)(1) in the interim final rule continues the NPRM's requirement that estimates of traffic that have not been adjusted to reflect annual average conditions be noted as unadjusted.

Comment

The NPRM reflected many of the major elements of the AASHTO Traffic Guidelines. These Guidelines identify 10 years as an appropriate retention period for traffic data and this was used in § 500.805(b)(6)(ii) in the NPRM. State agencies that commented on the retention period were in opposition although some non-State organizations felt that the retention period should be longer.

Response

In reviewing the intent of the NPRM, it was determined that data retention periods are a function of the use of the data. Since § 500.807(b) in the interim final rule clearly states that the traffic data collection program is to be responsive to user needs, it is not necessary to elaborate on this central idea by specifying a data retention period.

Comment

While most commenters did not object to inclusion of highway-related public transportation person and vehicular travel data as part of the TMS/H as proposed in § 500.801 in the NPRM, a few commenters felt strongly that such data should be part of the PTMS.

Response

In reviewing the uses of the data from the TMS/H, as well as the content of the PTMS, it was determined that the TMS/H is the most appropriate system for obtaining this type of data. Vehicle classification uses techniques that monitor all vehicle types in the traffic stream, including highway public transportation vehicles. Such classification data are a derivative of the traffic data collection process whether or not highway public transportation vehicle data may be reported elsewhere. Section 500.807(e) in the interim final rule recognizes that existing public transportation data collection programs may be the most efficient method of obtaining public transportation occupancy data and permits the use of such sources when they are available.

Comment

Section 500.805(b)(3) in the NPRM emphasized that certain types of factors are to be used in estimating average annual traffic conditions. Specifically, the estimating process is to account for the time of year and the time of week when the data were collected. The use of axle sensing devices as vehicle monitors requires that the count of axles be translated into an equivalent number of vehicles. Further, in the interval between conducting actual counts at a location, it is necessary to adjust count data based on estimates of traffic growth. While there was general agreement among the commenters that the estimating process needed to include each of these adjustments to the collected data, the commenters pointed out that there were various factoring approaches and factor definitions that could achieve the same end.

Response

To accommodate alternative approaches, § 500.807(h)(1) in the interim final rule retains the requirement to make the types of adjustments identified above, but allows the States to use methods and/or factors other than those found in the FHWA Traffic Monitoring Guide to make the identified adjustments.

Comment

A few commenters felt strongly that certain types of data or data collection methods should be required beyond those identified in the NPRM. These commenters felt that the collection of pedestrian data and the use of household based travel surveys should be a part of the rule.

Response

The interim final rule does not preclude collection of pedestrian data or the use of household surveys. The States and other involved agencies are in the best position to cooperatively determine the need for such data collection activities.

Comment

A small number of commenters felt that other vehicle types or vehicle groupings were more appropriate than those identified in the NPRM.

Response

The NPRM and the interim final rule seek to identify a minimum set of vehicle types so as to reduce the data collection burden and to identify only those vehicle types critical to meeting the intent of particular sections of the rule. The rule does not prohibit the collection of data on particular vehicle types, such as single-unit trucks, or the collection of data in greater detail than called for in the interim final rule.

Comment

A very limited number of commenters sought increased intervention by the FHWA into the management of State traffic data collection programs. These commenter responses included such topics as requiring the installation of traffic data collection devices, requiring that equipment be certified by the FHWA or reporting data on a calendar year basis only.

Response

These suggestions would lead to unnecessarily prescriptive requirements and are not included in the interim final rule.

Comment

Appropriate levels of documentation were discussed by a small number of commenters, especially the degree to which existing documentation could be used and how often such documentation would need to be available to the FHWA.

Response

It is not the intent of the rule to require that new documentation be developed if existing documentation is responsive to the rule. Similarly, as §§ 500.807(f)(2) and (h)(2) in the interim final rule indicate, annual submission of documentation is not expected and only a single submission of the documentation to the FHWA is needed with the submission of revisions as they occur. Section 500.805(e) requires a finding of acceptability of procedures only when alternatives to the FHWA recommendations are proposed for use. Documentation of field operations is expected to be able to respond to questions related to the bias in the data that may result from atypical temporal or geographic patterns of data collection or in the use of equipment that may have been found not to be within acceptable levels of operation.

Comment

The NPRM describes the collection of a limited amount of data types for public transportation operating on public highways. A few commenters felt

additional direction was needed in the collection of traffic data related to public transportation.

Response

The FHWA and the FTA reviewed the proposal, including the guidance on traffic monitoring for non-highway public transportation facilities and equipment included in subpart F, and determined that any additional detail in the interim final rule would be unnecessarily prescriptive. This rulemaking does not prohibit the collection of data beyond that described in the interim final rule.

Comment

A few commenters questioned the relationship of the TMS/H to the management systems.

Response

As mentioned earlier, the TMS/H is expected to serve a variety of traffic data needs. One of these needs is to provide traffic data to support each of the management systems. To the maximum extent practical, data gathered as part of the TMS/H should be used in the management systems; therefore, operators of the management systems should be among the users consulted to determine the type and accuracy of data to be collected by the TMS/H.

Comment

One commenter asked whether the use of the terms "rural arterials" and "urban arterials" in the NPRM was meant to identify new functional classes.

Response

They are not new functional classes, but were used to identify functional classifications that were considered to be related for purposes of reference in the NPRM. These terms are not used in the interim final rule.

Comment

The question of whether only the functional classifications identified in the NPRM should be the basis of the estimate of all travel on public highways within a State, i.e., the statewide vehicle miles of travel, was raised by one commenter.

Response

The identified functional classes in the NPRM serve only a portion of a State's highway travel. It is expected that those data users needing traffic data for functional classes beyond those in the interim final rule will provide guidance on which classes and the accuracy needed for any traffic estimates.

Comment

One commenter felt that the HPMS, AASHTO Traffic Guidelines, and the TMG should be combined into a single document.

Response

Since each of these serves different purposes, ranging from the collection of data for a national data base through recommendations of best State practices to guidance on meeting FHWA traffic data needs, such a synthesis is not felt appropriate or necessary and is beyond the scope of this rulemaking.

Comment

A commenter suggested that summarization of collected data is a significant aspect of any TMS/H.

Response

This suggestion identifies an important activity and is reflected in the definition of the TMS/H in § 500.803.

Comment

One commenter to the ANPRM suggested that the 1992 proceedings of the Transportation Research Board Conference "Transportation Data Needs: Programs for a New Era: Implications for State DOTs and MPOs" be considered in the development of the interim final rule.

Response

The report of these proceedings became available after the issuance of the NPRM and were reviewed by the FHWA. The findings of this report are reflected in the interim final rule's recognition that the traffic data collection program must remain responsive to the needs of the data user.

Section-by-Section Analysis

Section 500.801 Purpose

The rulemaking provides a policy for the development and implementation of a TMS/H. Material that defines a TMS/H was originally in this section in the NPRM but has been moved to § 500.803, TMS/H definitions. This section directs the reader to subpart F for guidance on traffic monitoring for non-highway public transportation facilities and equipment.

Section 500.803 TMS/H Definitions

Review of the definitions used in the NPRM suggested that since most were taken from the AASHTO Traffic Guidelines, it was not necessary to include them in the rule. Only the definitions for "Highway traffic data" and "Traffic monitoring system for highways" have been retained.

One State noted that "highway traffic data" is needed in order to make traffic characteristic estimates. The definition has been modified to recognize this need.

The definition of "Traffic monitoring system for highways," which was in § 500.801, Purpose, in the NPRM, has been modified and moved to § 500.803 in the interim final rule. Summarization of data has been added as a distinct activity within a TMS/H. In addition, since this rule does not require the reporting of TMS/H data, but the data would be analyzed to develop the travel estimates referenced in the definition of "highway traffic," the word "reporting" has been replaced with "analysis" in the interim final rule.

Section 500.805 TMS/H General Requirements

This section contains material that appeared in §§ 500.801 and 500.805(a) in the NPRM.

One State commented that the rule should emphasize that it applies only to public roads. The language in this section has been modified to clarify that only public roads are covered. It also was modified by deleting language that duplicated the definition of a TMS/H.

This section indicates that the TMS/H should reflect the concepts described in the AASHTO Traffic Guidelines and should be responsive to the concepts of the FHWA's TMG. In addition, the TMS/H shall be able to supply traffic data needed for the HPMS. A State's TMS/H must include all public roads, both on and off State administered systems, except those that have a functional classification of rural minor collector, rural local or urban local or those that are federally owned. Coverage of federally owned public roads will be determined cooperatively by the State, the FHWA, and the agencies that own the roads. Recognizing that various approaches may achieve the objectives of a TMS/H, States are allowed to use procedures other than those specified in the rulemaking if the alternative procedures are found acceptable by the FHWA. Nothing in this section is intended to prohibit the collection of other types of traffic data needed for the administration of the highway program, such as vehicle weights for enforcement purposes, axle weights for pavement research, bicycle travel data for use in the management of bicycle programs, adherence to national and local speed limits, or provision of level of service.

Section 500.807 TMS/H Components

This section contains material that appeared in § 500.805, Policy, in the NPRM. The various changes to the

paragraphs that appeared in the NPRM are described below.

Paragraph (a) stresses that each State's TMS/H is to positively address the elements described in paragraphs (b) through (h) of the § 500.807.

Paragraph (b), "Precision of reported data," indicates that intensity of the TMS/H data gathering effort should reflect the precision needed by the data user. The section also emphasizes that a State's TMS/H is to meet the statistical precision of data established by the FHWA for the HPMS. This feature of a TMS/H makes the data user an active participant in the formation of the traffic data gathering program. The requirement in the NPRM that the precision of data be supplied if requested by the data user was determined to be unnecessary and was removed.

Paragraph (c), "Continuous counter operations," specifies that an analysis of the data needs to be addressed and the accuracy of the data expected by the data user is necessary in order to determine the appropriate number of continuous counters. The rulemaking emphasizes the importance of the continuous count program for a State's TMS/H to be able to track changes in highway travel patterns and to provide for the development of day-of-week, seasonal and growth factors. The interim final rule differs from the NPRM in that it removes references to the continuous count program being structured on the basis of functional classification of highways. The interim final rule recognizes that factors other than those specifically identified in the rule may meet the rule's intent. Finally, discussion of conformance to the HPMS has been removed.

Paragraph (d), "Short term traffic monitoring," specifies that data collected to estimate traffic volumes using short term traffic monitoring procedures must be adjusted to annual average daily traffic to provide comparability from one location or time of data collection to another location or time of data collection. The interim final rule identifies the factors to be used and recognizes that States may develop other factors to meet the rule's intent. Unadjusted count data are to be identified as being unadjusted when they are reported.

Because of the high national interest in better monitoring of the nations's heavy truck movements (and therefore motor freight flows) more intense vehicle classification activities are specified for the NHS in paragraph (d)(2). The interim final rule requires that vehicle classification activities be sufficient to ensure that, on a three year cycle, every major system segment of the principal arterial system (defined as between interchanges or intersections of principal arterials with other principal arterials making up this system) will be monitored to provide information on the numbers of single-trailer combination trucks, multiple-trailer combination trucks, two-axle four-tire vehicles, buses and the total number of vehicles operating on an average day. The interim final rule differs from the NPRM in not differentiating between rural and urban monitoring. The interim final rule also allows the application of data from a monitoring session to adjoining system segments if the State determines that the segments serve similar traffic. The procedures are to be applied to all principal arterials until the NHS is approved by the Congress.

Paragraph (e), "Vehicle occupancy monitoring," specifies that data are to be collected on the average number of persons per automobile, light two-axle truck, or bus. The data are to support the uses identified in § 500.805, TMS/H general requirements, in the interim final rule. The decisions as to duration, geographic extent and level of detail of such data collection are left to the organizations that collect and use the data. The requirement in the NPRM that data are to be collected every three years has been changed. The interim final rule requires review of the available data and, based on that review, a determination if additional data need to be collected. Although the interim final rule identifies specific data collection methods that could be used, other data collection methods mutually acceptable to the responsible organizations and the FHWA may also be used.

Paragraph (f)(1) of § 500.807, "Field operations," in the interim final rule requires that a State's TMS/H have documented procedures for testing of traffic monitoring equipment. The NPRM's testing cycle has been deleted from the interim final rule. While test procedures developed by national organizations may be used, their use is not required by the interim final rule. Various equipment accuracies found in the NPRM do not appear in the interim final rule.

In paragraph (f)(2), the documentation for a TMS/H has been abbreviated from that in the NPRM and now includes the number of counts, the period of monitoring, the cycle of monitoring, and the spatial and temporal distribution of count sites.

In paragraph (g), "Source data retention," the NPRM called for the retention of the data as originally collected, when and where the data were collected, and the identity of the specific machine(s) used in the data collection. Under the interim final rule, the data as originally collected does not need to be retained if a new traffic estimate based on more current data is developed. The interim final rule does not require retention of information identifying the specific machine used to collect traffic data. Although data need not be retained in any specific format, a State's TMS/H must be able to provide data in formats compatible with the FHWA guidance.

Paragraph (h)(1) of § 500.807, "Office factoring procedures," in the interim final rule specifies that factors to be applied to short counts are to be reviewed annually with updating at least every three years. This is a change from the NPRM which called for annual revision of the factors.

In paragraph (h)(2), emphasis is placed on adherence by the State to its documented procedures for the derivation of annual traffic estimates based on short counts. This emphasis is necessary in order to assure that each data analyst within a State will be following the same procedures. Application of the same procedures will assure that each analyst will produce the same estimate of annual travel given the same original data. The documented procedures will include the factors to be applied when making an estimate of average traffic conditions. The documentation will remain available as long as the estimates resulting from the application of the procedures remain current.

Unlike the NPRM, the interim final rule does not require the rounding of adjustment factors or of the resulting travel estimates.

Section 500.809 TMS/H Compliance Schedule

This section identifies three stages of implementation for the TMS/H. By October 1, 1994, a work plan is to be formally established that results in application of the TMS/H process to the NHS by October 1, 1995, and to the other functional classes identified in the interim final rule by October 1, 1996. By October 1, 1995, the TMS/H is to be applied to the principal arterial system, or to the NHS when it is approved by the Congress. By October 1, 1996, the TMS/H is to be applied to all other highways identified in the interim final rule.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA and the FTA consider this rulemaking to be a significant regulatory

action under Executive Order 12866 and a significant regulation under the regulatory policies and procedures of the DOT because of substantial State, local government, congressional and public interest. These interests involve infrastructure management, receipt of Federal financial support for transportation investments, and compliance with legislative requirements.

This regulation implements section 1034 of the ISTEA which expressly requires that States implement the identified management and monitoring systems. The legislative mandate to implement the management and monitoring systems creates a responsibility for the Federal government to ensure effective investment of public funds and maintenance of federally funded infrastructure improvements. In developing this regulation, the FHWA and the FTA have sought to minimize the administrative burden on States and local governments. This regulation builds upon existing requirements and State practices, especially in the areas of pavement, bridge, safety, congestion relief, and traffic monitoring programs.

The ISTEA also requires that metropolitan and statewide transportation planning processes consider operation and maintenance of existing transportation systems. To this end, metropolitan and statewide transportation plans and improvement programs must consider the outputs of these management systems which are designed to address the current and future performance of the intermodal transportation system.

This regulation reflects the benefits of integrating the long term development of infrastructure with the management of existing systems, the value of cooperative planning and investment decisions, and the cost savings obtainable by utilizing the same data in multiple analytical activities. Effective use of the management systems should reduce the need for new capacity and prolong the useful life of existing infrastructure.

The management systems requirements are new only in a relative sense. In response to longstanding concerns regarding the prudent management of infrastructure, many States and MPOs have already adopted the rudiments of these processes or have fully operational systems. The FHWA and the FTA believe that most States and local governmental units have processes and procedures that parallel the basic requirements for these systems. The effect of this regulation would be to strengthen these processes and procedures by emphasizing performance of the transportation system through the analysis of data to support better informed transportation investment decisionmaking. Further, the regulation allows State and local determination of needed performance data and the utilization of existing data sources where possible.

Reports to the Federal government have been minimized through reliance on State certification of management systems implementation and integration of systems outputs into the planning process. Hence, because of the differing levels of implementation of management systems from State to State, it is difficult to estimate any additional burden of the regulation until the requirements are known to the implementing agencies and more reliable information can be obtained. The FHWA and the FTA believe that any additional costs to State and local governments to develop and implement these systems will be minimal, in view of current processes and procedures, and that these costs will be offset by the benefits.

To assist in further evaluation and public comment of the impacts of this rule, particularly in the areas of data gathering and analysis, the agencies have prepared a preliminary Regulatory Evaluation which has been placed in the docket. The Regulatory Evaluation also covers impacts relating to a companion rule on Statewide and metropolitan planning, 58 FR 58040, October 28, 1993 (FHWA Dockets 93–4 and 93–5).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA and the FTA have evaluated the effects of this rule on small entities, such as local governments and businesses. This regulation would require States, in cooperation with MPOs, local governments, and others, to develop and implement the management and monitoring systems required by section 1034 of the ISTEA. Several categories of Federal funds that are available for these purposes are identified in the rule. Because the FHWA and the FTA believe that the cost of implementing these systems will be minimal and because Federal funds are available for these activities, the FHWA and the FTA believe that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the FHWA and the FTA certify that this rulemaking would not have a significant economic impact on a substantial number of such entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Section 303 of title 23, U.S.C., requires the Secretary to issue regulations and requirements/guidelines to implement the management and traffic monitoring system provisions. The rule recognizes the role of States, MPOs, local governments, and operators of transportation systems and facilities in implementing these systems. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order. It has been determined that this rule does not have sufficient Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Planning and Construction, 20.505, FTA Technical Studies Grants, and 20.507, Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

Paperwork Reduction Act

The creation and submission of required reports and documents have been limited to those necessary for performance of the FHWA's and the FTA's legislative and administrative responsibilities. The legislation requires the States to certify annually that they are implementing the management systems. The Secretary must also report annually to the Congress on progress being made in implementing the legislative provisions. The rule requires that States provide a work plan with the first certification and information on the status of implementation for use in preparing the Secretary's report as part of each annual certification statement. It is estimated that the burden per year for the States to provide the certifications and status information will be approximately 12,480 hours. The one-time burden to develop the work plans for each of the seven systems is estimated to be 29,120 hours. (These information collection requirements have been approved by the Office of Management and Budget (OMB) under control number 2125–0555.) No other

information is required to be reported under this regulation. However, additional data may need to be collected by some States and other involved agencies for some of the management and monitoring systems. The FHWA and the FTA estimate that the burden for this additional data may range up to a maximum of 500,000 hours per year. After issuance of this interim final rule, the FHWA and the FTA will obtain additional information to better estimate this burden and will submit an amended request to the OMB for approval of any additional information collection.

National Environmental Policy Act

The FHWA and the FTA have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 500

Bridges, Grant programs—transportation, Highway traffic safety, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

23 CFR Part 626

Design standards, Grant programs—transportation, Highways and roads.

49 CFR Part 614

Grant programs—transportation, Mass transportation.

Issued on: November 22, 1993.

Rodney E. Slater,

Federal Highway Administrator.

Gordon J. Linton,

Federal Transit Administration.

In consideration of the foregoing, Chapter I of title 23, Code of Federal Regulations and Chapter VI of 49 CFR are amended as set forth below.

23 CFR CHAPTER I

1. The heading of subchapter F of 23 CFR Chapter I is revised and a new part 500 is added to subchapter F to read as follows:

SUBCHAPTER F—TRANSPORTATION INFRASTRUCTURE MANAGEMENT

PART 500—MANAGEMENT AND MONITORING SYSTEMS

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Authority: 23 U.S.C. 134, 135, 303 and 315; 49 U.S.C. app. 1607; 23 CFR 1.32; and 49 CFR 1.48 and 1.51.

Subpart A—General

§ 500.101 Purpose.

The purpose of this part is to implement the requirements of 23 U.S.C. 303, Management Systems, which requires State development, establishment, and implementation of systems for managing highway pavement of Federal-aid highways (PMS), bridges on and off Federal-aid highways (BMS), highway safety (SMS), traffic congestion (CMS), public transportation facilities and equipment (PTMS), and intermodal transportation facilities and systems (IMS). Section 303 also requires State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment. This subpart includes definitions and general requirements that are applicable to all of these systems. Additional requirements applicable to a specific system are included in subparts B through H of this part.

§ 500.103 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Certifying official(s) means the position(s) designated by the Governor of a State or the Commonwealth of Puerto Rico or the Mayor of the District of Columbia to certify that the management system(s) is/are being implemented in the State.

Cooperation means working together to achieve a common goal or objective.

Federal agency(ies) means for the PMS and BMS, the Federal Highway Administration (FHWA); for the SMS, the FHWA and the National Highway Traffic Safety Administration; for the CMS, PTMS, and IMS, the FHWA and the Federal Transit Administration (FTA).

Federal-aid highways means those highways eligible for assistance under title 23, U.S.C., except those functionally classified as local or rural minor collectors.

Highway Performance Monitoring System (HPMS) means the State/Federal system used by the FHWA to provide information on the extent and physical condition of the nation's highway system, its use, performance, and needs. The system includes an inventory of the nation's highways including traffic volumes.

Life-cycle cost analysis means a procedure for evaluating the economic worth of one or more projects or investments by discounting future costs

over the life of the project or investment.

Management system means a systematic process, designed to assist decisionmakers in selecting cost-effective strategies/actions to improve the efficiency and safety of, and protect the investment in, the nation's transportation infrastructure. A management system includes: Identification of performance measures; data collection and analysis; determination of needs; evaluation and selection of appropriate strategies/actions to address the needs; and evaluation of the effectiveness of the implemented strategies/actions.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act (49 U.S.C. app. 1607) must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for a metropolitan planning area.

National highway system (NHS) means the system of highways designated and approved in accordance with the provisions of 23 U.S.C. 103(b).

Performance measures means operational characteristic, physical condition, or other appropriate parameters used as a benchmark to evaluate the adequacy of transportation facilities and estimate needed improvements.

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the FTA. The TMA designation applies to the entire metropolitan planning area(s).

Work plan means a written description of major activities necessary to develop, establish, and implement a management or monitoring system, including identification of responsibilities, resources, and target dates for completion of the major activities.

§ 500.105 Development, establishment, and implementation of the systems.

(a) Each State shall develop, establish, and implement the systems identified in § 500.101. Each State shall tailor the systems to meet State, regional, or local goals, policies, and resources, but the systems must meet the requirements as specified in subparts B through H of this part. Documentation that describes each management system shall be maintained by the States for the Federal agencies to determine, on a periodic basis, whether the systems meet the requirements in this subpart and subparts B through H of this part, as applicable.

(b) Each State shall have procedures, within the State's organization, for coordination of the development, establishment, implementation and operation of the management systems. The procedures must include:

(1) An oversight process to assure that adequate resources are available for implementation and that target dates in the work plan(s) are met;

(2) The use of data bases with a common or coordinated reference systems and methods for data sharing; and

(3) A mechanism to address issues related to the purposes of more than one management system.

(c) In developing and implementing each management system, the State shall cooperate with MPOs in metropolitan areas, local officials in non-metropolitan areas, affected agencies receiving assistance under the Federal Transit Act and other agencies (including private owners and operators) that have responsibility for operation of the affected transportation systems or facilities.

(d) In accordance with the provisions of 23 U.S.C. 134(i)(3) and 49 U.S.C. app. 1607(i)(3) and the requirements of 23 CFR part 450, the CMS shall be part of the metropolitan planning process in TMAs.

(e) Within metropolitan planning areas, the CMS, PTMS, and IMS shall, to the extent appropriate, be part of the metropolitan transportation planning process required under the provisions of 23 U.S.C. 134 and 49 U.S.C. app. 1607.

(f) In metropolitan planning areas that have more than one MPO and/or that include more than one State, the establishment, development, and implementation of the CMS, PTMS, and IMS shall be coordinated among the State(s) and MPO(s) to ensure compatibility of the systems and their results.

(g) The results (e.g., policies, programs, projects, etc.) of the individual management systems shall be considered in the development of metropolitan and statewide transportation plans and improvement programs and in making project selection decisions under title 23, U.S.C., and under the Federal Transit Act.

(h) The roles and responsibilities of the State, MPO(s), recipients of assistance under the Federal Transit Act, and other agencies involved in the development, establishment, and implementation of each system shall be mutually determined by the parties involved. A State may enter into agreements with local governments, regional agencies (such as MPOs), recipients of funds under the Federal Transit Act, or other entities to develop, establish, and implement appropriate parts of any or all of the systems, but the State shall be responsible for overseeing and coordinating such activities.

(i) Section 204(a) of title 23, U.S.C., requires the Secretary in cooperation with the Secretaries of the Interior and Agriculture to develop the safety, bridge and pavement management systems for Federal lands highways, as defined in 23 U.S.C. 101(a). To avoid duplication of effort, the management systems required under this part should be used to the extent appropriate to fulfill the requirement in 23 U.S.C. 204(a) regarding establishment and implementation of pavement, bridge, and safety management systems for Federal lands highways. The State, the Federal agencies, and the agencies that own the roads shall cooperatively determine responsibility for coverage of Federal lands highways under their respective jurisdictional control and shall ensure that the results of the PMS, BMS, and SMS for Federal lands highways are available, as appropriate, for consideration in developing metropolitan and statewide transportation plans and improvement programs and are provided to the FHWA for use in developing Federal lands highway programs.

(j) Each management system must include appropriate means to evaluate the effectiveness of implemented actions developed through use of that system. The effectiveness of the management systems in enhancing transportation investment decisions and improving the overall efficiency of the State's transportation systems and facilities shall be evaluated periodically, preferably as part of the metropolitan and statewide planning processes.

§ 500.107 Compliance.

(a) States must be implementing the management systems specified in subparts B through G of this part beginning in Federal fiscal year 1995 (October 1, 1994 to September 30, 1995) and must certify annually to the Secretary of Transportation that they are implementing each of the management systems. A State shall be considered to be implementing a management system if the system is under development or in use in accordance with the

compliance schedule for that system as specified in subparts B through G of this part.

(b) The Governor of the State or the Commonwealth of Puerto Rico or the Mayor of the District of Columbia shall notify the FHWA Division Administrator in writing by September 30, 1994, of the title(s) of the certifying official(s) for each management system. If there is a change in designated position(s), the State shall provide documentation of the revised designation with, or prior to, the next annual certification. In those States where responsibility for all of the management systems is within a single agency (e.g., State DOT), designation of one certifying official for all of the management systems is recommended.

(c) The certification statement(s) shall be submitted by the certifying official(s) to the FHWA Division Administrator by January 1 of each year, beginning January 1, 1995. To the extent possible, one certification statement should cover all six management systems. If more than one certification statement will be submitted by a State, the statements should be coordinated at the State level and submitted simultaneously. The first certification statement shall include a copy of the workplan(s), required in accordance with the compliance schedule for each management system, and a summary of the status of implementation of the management system(s). Subsequent certification statement(s) shall include a summary of the status of implementation of each management system and a discussion of planned corrective actions for any management system(s) or subsystem(s) that are not under development or fully operational in accordance with the compliance schedule and work plan for the management system.

(d) The FHWA Division Administrator will provide copies of the certification statement(s) and any relevant supporting documentation and correspondence to other Federal agencies identified for the specific system(s) in § 500.103. Within 90 days of receipt, the Federal agencies will review the certification and the FHWA Division Administrator will notify the State whether the certification is acceptable or if sanctions may be imposed in accordance with the provisions of § 500.109.

(e) A State shall be considered to be implementing the traffic monitoring system for highways (TMS/H), specified in subpart H of this part, if the system is under development or in use in accordance with the compliance schedule in § 500.809. The State shall submit the work plan for the TMS/H to the FHWA Division Administrator by January 1, 1995.

(The information collection requirements in paragraphs (c) and (e) of § 500.107 have been approved by the Office of Management and Budget under control number 2125–0555.)

§ 500.109 Sanctions.

(a) Beginning January 1, 1995, if a State fails to certify annually as required by this regulation, or if the Federal agencies determine that any management system or subsystem, specified in subparts B through G of this part, is not being adequately implemented, notwithstanding the State's certification(s), the Secretary may withhold up to 10 percent of the funds apportioned to the State under title 23, U.S.C., and to any recipient of assistance under the Federal Transit Act for any fiscal year beginning after September 30, 1995. Sanctions may be imposed on a statewide basis, on a subarea of a State, for specific categories of funds or types of projects, or for specific recipients or subrecipients of funds under title 23, U.S.C., or under the Federal Transit Act depending on the adequacy of implementation of the management systems.

(b) While a State may enter into agreements with local governments or other agencies to develop, establish, and implement all or parts of the management systems, in accordance with § 500.105(g), the State shall be responsible for ensuring that the systems are being implemented statewide and for taking any necessary corrective action, including implementing the systems at the regional and local levels if necessary.

(c) Prior to imposing a sanction, a State will be notified in writing by the FHWA of the sanction(s) to be imposed, the reasons for the sanctions, and the actions necessary to correct the deficiencies. After 60 days from the date of notification to the State, the Federal agencies will consider any corrective actions proposed by the State and the FHWA will notify the State if such actions are acceptable or if sanctions are to be applied.

(d) In instances where a State, or responsible sub-unit of a State or recipient of funds under the Federal Transit Act, has not fully implemented all of the management systems, consideration shall be given by the Federal agencies to efforts underway or planned to make the systems fully operational within a reasonable time period.

(e) To the extent that they have not lapsed, funds withheld pursuant to this subpart shall be made available to the State or recipient under the Federal Transit Act upon a determination by the Federal agencies that the management systems are being adequately implemented.

§ 500.111 Funds for development, establishment, and implementation of the systems.

(a) The following categories of funds may be used for development, establishment, and implementation of any of the management and monitoring systems: National Highway System, Surface Transportation Program, FHWA State planning and research and metropolitan planning funds (including the optional use of minimum allocation funds authorized under 23 U.S.C. 157(c) for carrying out the provisions of 23 U.S.C. 307(c)(1) and 23 U.S.C. 134(a)), Federal Transit Act Section 8 (49 U.S.C. app. 1607), Federal Transit Act Section 9 (49 U.S.C. app. 1607a), Federal Transit Act Section 26(a)(2) (49 U.S.C. app. 1622(a)(2)), and Federal Transit Act Section 26(b)(1) (49 U.S.C. app. 1626(b)(1)). Congestion Mitigation and Air Quality Improvement Program funds (23 U.S.C. 104(b)(2)) may be used for those management systems that can be shown to contribute to the attainment of a national ambient air quality standard. Apportioned bridge funds (23 U.S.C. 144(e)) may be used for development and establishment of the bridge management system.

(b) Federal funds identified in paragraph (a) of this section used for development, establishment, or implementation of the management and monitoring systems shall be administered in accordance with the procedures and requirements applicable to the category of funds.

§ 500.113 Acceptance of existing management systems.

(a) Existing State laws, rules, or procedures that the Federal agencies determine fulfill the purposes of a management system, or portion thereof, as specified in this part may be accepted by the Federal agencies in lieu of development and implementation of a new system.

(b) If a State has existing laws, rules, or procedures that it wants to use to meet the requirements of this part, it shall submit a written request to the FHWA Division Administrator that the Federal agencies accept the existing management system in lieu of development of a new system. The request shall include a discussion, and any necessary supporting documentation, that shows how the existing system meets the requirements of this part. The documentation shall reflect the views of the MPOs, transit

operators, and other affected agencies, as appropriate, and the actions to be taken to assure that the cooperation required under § 500.105(c) is established.

(c) Upon receipt of a request, the FHWA Division Administrator will coordinate review of the request with the other Federal agencies specified in § 500.103 and with appropriate FHWA offices. Within 90 days of receipt of the State's request, the FHWA will notify the State that the existing system is either fully acceptable, acceptable subject to specific modifications, or unacceptable and that a new system must be developed.

(d) To meet the compliance schedule for a system, the State must submit any requests under paragraph (a) of this section no later than June 1, 1994.

Subpart B—Pavement Management System

§ 500.201 Purpose.

The purpose of this subpart is to set forth requirements for development, establishment, implementation, and continued operation of a pavement management system (PMS) for Federal-aid highways in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part.

§ 500.203 PMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Pavement design means a project level activity where detailed engineering and economic considerations are given to alternative combinations of subbase, base, and surface materials which will provide adequate load carrying capacity. Factors which are considered include: materials, traffic, climate, maintenance, drainage, and life-cycle costs.

Pavement management system (PMS) means a systematic process that provides, analyzes, and summarizes pavement information for use in selecting and implementing cost-effective pavement construction, rehabilitation, and maintenance programs.

§ 500.205 PMS general requirements.

(a) Each State shall have a PMS for Federal-aid highways that meets the requirements of § 500.207 of this subpart.

(b) The State is responsible for assuring that all Federal-aid highways in the State, except those that are federally owned, are covered by a PMS. Coverage of federally owned public roads shall be determined cooperatively by the State, the FHWA, and the agencies that own the roads.

(c) PMSs should be based on the concepts described in the "AASHTO Guidelines for Pavement Management Systems." [1]

(d) Pavements shall be designed to accommodate current and predicted traffic needs in a safe, durable, and cost-effective manner.

§ 500.207 PMS components.

(a) The PMS for the National Highway System (NHS) shall, as a minimum, consist of the following components:

(1) Data collection and management.

(i) An inventory of physical pavement features including the number of lanes, length, width, surface type, functional classification, and shoulder information.

(ii) A history of project dates and types of construction, reconstruction, rehabilitation, and preventive maintenance.

(iii) Condition surveys that include ride, distress, rutting, and surface friction.

(iv) Traffic information including volumes, classification, and load data.

(v) A data base that links all data files related to the PMS. The data base shall be the source of pavement related information reported to the FHWA for the HPMS in accordance with the HPMS Field Manual.[2]

(2) Analyses, at a frequency established by the State consistent with its PMS objectives.

(i) A pavement condition analysis that includes ride, distress, rutting, and surface friction.

(ii) A pavement performance analysis that includes an estimate of present and predicted performance of specific pavement types and an estimate of the remaining service life of all pavements on the network.

(iii) An investment analysis that includes:

(A) A network-level analysis that estimates total costs for present and projected conditions across the network.

(B) A project level analysis that determines investment strategies including a prioritized list of recommended candidate projects with recommended preservation treatments that span single-year and multi-year periods using life-cycle cost analysis.

(C) Appropriate horizons, as determined by the State, for these investment analyses.

(iv) For appropriate sections, an engineering analysis that includes the evaluation of design, construction, rehabilitation, materials, mix designs, and preventive maintenance as they relate to the performance of pavements.

(3) Update. The PMS shall be evaluated annually, based on the agency's current policies, engineering criteria, practices, and experience, and updated as necessary.

(b) The PMS for Federal-aid highways that are not on the NHS shall be modeled on the components described in paragraph (a) of this section, but may be tailored to meet State and local needs. These components shall incorporate the use of the international roughness index or the pavement serviceability rating data as specified in Chapter IV of the HPMS Field Manual.

§ 500.209 PMS compliance schedule.

(a) By October 1, 1994, the State shall develop a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the PMS on the NHS by October 1, 1995, and on non-NHS Federal-aid highways by October 1, 1997.

(b) By October 1, 1995:

(1) The PMS for the NHS shall be fully operational and shall provide projects and programs for consideration in developing metropolitan and statewide transportation plans and improvement programs; and

(2) PMS design for non-NHS Federal-aid highways shall be completed or underway in accordance with the State's work plan.

(c) By October 1, 1997, the PMS for non-NHS Federal-aid highways shall be fully operational and shall provide projects and programs for consideration in developing metropolitan and statewide transportation plans and improvement programs.

Subpart C—Bridge Management System

§ 500.301 Purpose.

The purpose of this subpart is to set forth requirements for the development, establishment, implementation, and continued operation of a management system for bridges (BMS) on and off Federal-aid highways in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part.

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[1] AASHTO Guidelines for Pavement Management Systems, July 1990, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., suite 225, Washington, DC 20001. Available for inspection as prescribed in 49 CFR part 7, appendix D.

[2] Highway Performance Monitoring System (HPMS) Field Manual for the Continuing Analytical and Statistical Data Base, DOT/FHWA, August 30, 1993, (FHWA Order M5600.1B). Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

§ 500.303 BMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Bridge management system (BMS) means a decision support tool that supplies analyses and summaries of data, uses mathematical models to make predictions and recommendations, and provides the means by which alternative policies and programs may be efficiently considered. A BMS includes formal procedures for collecting, processing, and updating data, predicting deterioration, identifying alternative actions, predicting costs, determining optimal policies, performing short- and long-term budget forecasting, and recommending programs and schedules for implementation within policy and budget constraints.

Elements means the components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

Multiperiod optimization means a procedure that optimally allocates limited funds among alternative actions over a planning horizon (both short and longterm) using an optimization procedure such as minimizing life-cycle and user costs. The modeling procedure accounts for traffic growth and deterioration, and facilitates analyses of the effects of alternative policies, budgets, and operational practices on the future conditions and long-term serviceability of the bridge inventory.

Network level analysis means an analysis pertaining to policy, system planning, programmatic, or budgeting issues for the whole bridge inventory on a roadway network or a subset thereof.

Serviceability means the degree to which a bridge provides satisfactory service from the users' point of view.

User costs means costs borne by bridge users, traveling on or beneath the structure and excess costs to those who cannot use the bridge due to load or clearance restrictions. It includes travel time, motor vehicle operating, and accident costs that are measured on site or estimated using models.

§ 500.305 BMS general requirements.

Each State shall have a BMS for bridges on and off Federal-aid highways that includes the components identified in § 500.307 of this subpart. Except for federally owned bridges, all bridges required to be inventoried and inspected under 23 CFR part 650, subpart C—National Bridge Inspection Standards, shall be included. Each State shall maintain a centralized data base that contains the BMS data for bridges on and off Federal-aid highways, except those that are federally owned. The State shall implement network analysis procedures that are capable of analyzing data for all bridges in the inventory or in any subset including inventories within any MPO jurisdiction or within a local agency jurisdiction. Local bridge owners may supplement the State BMS with a locally operated system that is tailored to their particular needs. Coverage of federally owned bridges on public roads shall be determined cooperatively by the State, the FHWA, and the agencies that own the bridges.

§ 500.307 BMS components.

(a) A State BMS shall include, as a minimum, the components identified in paragraphs (b) and (c) of this section.

(b) A data base and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS.

(c) A rational and systematic procedure for applying network level analysis and optimization to the bridge inventory. The procedure shall have the ability to:

(1) Predict the deterioration of bridge elements with and without intervening actions.

(2) Identify feasible actions to improve bridge condition, safety, and serviceability.

(3) Estimate the cost of actions.

(4) Estimate expected user cost savings for safety and serviceability improvements.

(5) Determine least-cost maintenance, repair, and rehabilitation strategies for bridge elements using life-cycle cost analysis or a comparable procedure.

(6) Perform multiperiod optimization.

(7) Use feedback from actions taken to update prediction and cost models.

(8) Generate summaries and reports as needed for the planning and programming processes.

§ 500.309 BMS compliance schedule.

(a) By October 1, 1994, the State shall have formalized its BMS objectives and developed a work plan that identifies major activities and responsibilities for BMS development and implementation. The work plan shall include a schedule that demonstrates full operation and use of the BMS by October 1, 1998.

(b) By October 1, 1995, the design of the BMS shall be completed or underway in accordance with the State's work plan and full-scale data collection shall be underway.

(c) By October 1, 1998, the BMS shall be fully operational and shall result in the identification of bridge needs for consideration in developing metropolitan and statewide transportation plans and improvement programs.

Subpart D—Highway Safety Management System

§ 500.401 Purpose.

The purpose of this subpart is to set forth requirements for the development, establishment, implementation, and continued operation of a highway safety management system (SMS) in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part.

§ 500.403 SMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Highway safety means the reduction of traffic crashes, and deaths, injuries, and property damage resulting therefrom, on public roads.

Highway safety management system (SMS) means a systematic process that has the goal of reducing the number and severity of traffic crashes by ensuring that all opportunities to improve highway safety are identified, considered, implemented as appropriate, and evaluated in all phases of highway planning, design, construction, maintenance, and operation and by providing information for selecting and implementing effective highway safety strategies and projects.

Operations means activities associated with managing, controlling, and regulating highway traffic.

§ 500.405 SMS general requirements.

(a) Each State shall develop, establish, and implement, on a continuing basis, an SMS for all public roads, except federally owned public roads. Coverage of federally owned public roads shall be determined cooperatively by the State, the federal agencies, and the agencies that own the roads.

(b) The SMS shall incorporate the roadway, human, and vehicle safety elements. Formalized and interactive communication, coordination, and cooperation shall be established among the organizations responsible for these major safety elements including: enforcement, emergency medical services, emergency response, motor carrier safety, motor vehicle administration, State highway safety agencies, the public health community, State and local transportation/highway agencies, and State and local railroad and/or trucking regulatory agencies. State agencies shall also coordinate, as appropriate, with Local Technical Assistance Program centers to develop

and expand the SMS expertise of local transportation agencies.

(c) The State shall consider and include, where appropriate, projects and programs identified by use of the SMS in its Highway Safety Plan (HSP) (23 CFR 1204.4, Supp. B) and Motor Carrier Safety Assistance Program State Enforcement Plan (SEP) (49 CFR part 350). In addition the results of the SMS shall be considered in developing metropolitan and statewide transportation plans and improvement programs.

(d) Each State shall assign a focal point for coordination of the development, establishment, and implementation of the SMS among the agencies responsible for the roadway, human, and vehicle safety elements.

(e) While the SMS applies to all public roads, in addition to tailoring the system to meet State, regional and local goals, policies, and resources, the extent of system requirements (e.g., data collection, analyses, and standards) for rural minor collectors and local roads may be further tailored to be consistent with the functional classification of the road. However, adequate detail must be included for each functional classification to provide for effective safety decisions in the administration of highway transportation by State and local agencies.

§ 500.407 SMS components.

(a) Plans, processes, procedures, and practices shall be established to implement, coordinate, and evaluate programs, projects, and activities of the five major areas identified in paragraph (b) of this section. These plans, processes, procedures, and practices, shall incorporate, as appropriate:

(1) Establishment of short- and long-term highway safety goals to address both existing and anticipated safety problems as well as substandard highway locations, designs, and features, and to allocate resources;

(2) Establishment of accountability by identifying and defining the safety responsibilities of units and positions;

(3) Recognition of institutional and organizational initiatives through identification of disciplines involved in highway safety at the State and local level, assessment of multi-agency responsibilities and accountability, and establishment of coordination, cooperation, and communication mechanisms;

(4) Collection, maintenance, and dissemination of data necessary for identifying problems and determining improvement needs. Data bases and data sharing shall be integrated as necessary to achieve maximum utilization of existing and new data within and among the agencies responsible for the roadway, human, and vehicle safety elements. These records, as a minimum, shall consist of information pertaining to: crashes, traffic (including number of trains at highway-rail crossings), pedestrians, enforcement activities, vehicles, bicyclists, drivers, highways, and medical services;

(5) Analysis of available data, multi-disciplinary and operational investigations, and comparisons of existing conditions and current standards to assess highway safety needs, select countermeasures, and set priorities;

(6) Evaluation of the effectiveness of activities that relate to highway safety performance to guide future decisions;

(7) Development and implementation of public information and education activities to educate and inform the public on safety needs, programs, and countermeasures that affect safety on the nation's highways; and

(8) Identification of skills, resources, and current and future training needs to implement the State's activities and programs affecting highway safety, development of a program to carry out necessary training, and development of methods for monitoring and disseminating new technology and incorporating effective results.

(b) Five major areas shall be addressed in structuring the SMS:

(1) Coordinating and integrating broad base safety programs (such as motor carrier, corridor, and community based traffic safety activities) into a comprehensive management approach for highway safety;

(2) Identifying and investigating hazardous or potentially hazardous highway safety problems, roadway locations and features (including railroad-highway grade crossings) and establishing countermeasures and priorities to correct the identified hazards or potential hazards;

(3) Ensuring early consideration of safety in all highway transportation programs and projects;

(4) Identifying safety needs of special user groups (such as older drivers, pedestrians, bicyclists, motorcyclists, commercial motor carriers, and hazardous material carriers) in the planning, design, construction, and operation of the highway system; and

(5) Routinely maintaining and upgrading safety hardware (including highway-rail crossing warning devices), highway elements, and operational features.

§ 500.409 SMS compliance schedule.

(a) By October 1, 1994, the State shall develop a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the SMS by October 1, 1996.

(b) By October 1, 1995, the SMS shall be complete or underway in accordance with the State's work plan.

(c) By October 1, 1996, the SMS shall be fully operational and shall provide highway safety strategies, actions, projects, or programs for consideration in the development of the HSP, the SEP and metropolitan and statewide and transportation plans and improvement programs, and for coordination and implementation in the operational activities of the State and local agencies.

Subpart E—Traffic Congestion Management System

§ 500.501 Purpose.

The purpose of this subpart is to set forth requirements for development, establishment, implementation, and continued operation of a system for managing traffic congestion (CMS) in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part. The requirement in 23 U.S.C. 134 that the transportation planning process in a transportation management area (TMA) include a congestion management system is also covered by this subpart and by 23 CFR part 450.

§ 500.503 CMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. The level of acceptable system performance may vary by type of transportation facility, geographic location (metropolitan area or subarea, rural area) and/or time of day.

Congestion management system (CMS) means a systematic process that provides information on transportation system performance and alternative strategies to alleviate congestion and enhance the mobility of persons and goods. A CMS includes methods to monitor and evaluate performance, identify alternative actions, assess and implement cost-effective actions, and evaluate the effectiveness of implemented actions.

§ 500.505 CMS general requirements.

(a) Each State shall develop, establish, and implement, on a continuing basis,

a CMS that results in the identification and implementation of strategies that provide the most efficient use of existing and future transportation facilities in all areas of a State, including metropolitan and non-metropolitan areas, where congestion is occurring or is expected to occur. The State, the Federal agencies, and the agencies that own the facilities shall cooperate to manage congestion on federally owned facilities.

(b) In both metropolitan and non-metropolitan areas, consideration shall be given to strategies that reduce single-occupant-vehicle (SOV) travel and improve existing transportation system efficiency. Where the addition of general purpose lanes is determined to be an appropriate strategy, explicit consideration shall be given to the incorporation of appropriate features into the SOV project to facilitate future demand management and operational improvement strategies to maintain the functional integrity of those lanes.

(c) All transportation corridors or facilities with existing or potential recurring congestion shall be identified and an assessment of the level of the current or potential congestion shall be made on a continuing basis. Based on this assessment, the geographical area to be covered and the transportation facilities to be included in the CMS shall be established, except that the entire metropolitan planning area shall be included in TMAs that are nonattainment for carbon monoxide and/or ozone. Coverage of facilities and activities shall be sufficient to accurately reflect any cumulative effects that the implementation of a combination of physical improvements and/or areawide transportation policy decisions may have on transportation system performance.

(d) In all TMAs, the CMS shall be part of the metropolitan planning process in accordance with 23 CFR 450.120(b).

(e) In addition to the other requirements of this subpart, in a TMA designated as nonattainment for carbon monoxide and/or ozone, the CMS shall provide an appropriate analysis of all reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that will result in a significant increase in capacity for SOVs (adding general purpose lanes to an existing highway or constructing a new highway) is proposed. If the analysis demonstrates that travel demand reduction and operational management strategies cannot fully satisfy the need for additional capacity in the corridor and additional SOV capacity is warranted, then the CMS shall identify all reasonable strategies to manage the SOV facility effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself shall also be identified through the CMS. As required by 23 CFR 450.320(b), all identified reasonable travel demand reduction and operational management strategies shall be incorporated into the SOV project or committed to by the State and MPO for implementation.

(f) In areas that are nonattainment for transportation related pollutants, the strategies developed as part of the CMS shall be coordinated with the process for the development of the transportation control measures of the State implementation plan for air quality required under the provisions of the Clean Air Act.

(g) Because of their interrelationship, the development, establishment, and implementation of the CMS shall be coordinated with the development, establishment, and implementation of the public transportation management system and the intermodal management system described in subparts F and G, respectively, of this part.

§ 500.507 CMS components.

(a) *Performance measures.* Parameters shall be defined that will provide a measure of the extent of congestion and permit the evaluation of the effectiveness of congestion reduction and mobility enhancement strategies for the movement of people and goods. Since acceptable system performance may vary among local communities, performance measures shall be established cooperatively by the State and affected MPO(s) or local officials in consultation with the operators of major modes of transportation in the coverage area.

(b) *Data collection and system monitoring.* A continuous program of data collection and system monitoring shall be established to determine and monitor the duration and magnitude of congestion and to evaluate the effectiveness of implemented actions. To the extent possible, existing data sources, such as, the HPMS and FTA Section 15 data, should be used.

(c) *Identification and evaluation of proposed strategies.* The 'anticipated performance and expected benefits of traditional and nontraditional strategies that will contribute to the more efficient use of existing and future transportation systems shall be identified and evaluated based on the established performance measures. Strategies, or combinations of strategies, to be appropriately considered include, but are not limited to:

(1) Transportation demand management measures, such as, carpooling, vanpooling, alternative work hours, telecommuting, and parking management;

(2) Traffic operational improvements, such as, intersection and roadway widening, channelization, traffic surveillance and control systems, motorist information systems, ramp metering, traffic control centers, and computerized signal systems;

(3) Measures to encourage high occupancy vehicle (HOV) use, such as, HOV lanes, HOV ramp bypass lanes, guaranteed ride home programs, and employer trip reduction ordinances;

(4) Public transit capital improvements, such as, exclusive rights-of-way (rail, busways, bus lanes), bus bypass ramps, park and ride and mode change facilities, and paratransit services;

(5) Public transit operational improvements, such as, service enhancement or expansion, traffic signal preemption, fare reductions, and transit information systems;

(6) Measures to encourage the use of nontraditional modes such as bicycle facilities, pedestrian facilities, and ferry service;

(7) Congestion pricing;

(8) Growth management and activity center strategies;

(9) Access management techniques;

(10) Incident management;

(11) Intelligent vehicle-highway system and advanced public transportation system technology; and

(12) The addition of general purpose lanes.

(d) *Implementation of strategies.* For each strategy (or combination of strategies) proposed for implementation, an implementation schedule, implementation responsibilities, and possible funding sources shall be identified.

(e) *Evaluation of the effectiveness of implemented strategies.* A process for periodic assessment of the effectiveness of implemented strategies, in terms of the area's established performance measures, shall be implemented. The results of this evaluation shall be provided to decisionmakers to provide guidance on selection of effective strategies for future implementation.

§ 500.509 CMS compliance schedule.

(a) By October 1, 1994, the State shall develop a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the CMS in

TMAs that are nonattainment for ozone and/or carbon monoxide by October 1, 1995, and in all other areas by October 1, 1996. The most critical areas requiring analysis shall be identified and data collection activities shall be initiated.

(b) By October 1, 1995:

(1) In TMAs that are nonattainment for ozone and/or carbon monoxide, the CMS shall be fully operational and shall provide projects and programs for consideration in developing metropolitan and statewide transportation plans and improvement programs. Until the CMS in a TMA that is nonattainment for carbon monoxide and/or ozone is fully operational in accordance with the requirements of this subpart, the interim CMS requirements in 23 CFR 450.336(b) regarding the programming of Federal funds for a highway or transit project that significantly increases capacity for SOVs shall be met; and

(2) In all other areas, system design shall be completed or underway in accordance with the State's work plan and full-scale data collection shall be underway.

(c) By October 1, 1996, the CMS shall be fully operational in all areas and shall provide projects and programs for consideration in developing of metropolitan and statewide transportation plans and improvement programs.

Subpart F—Public Transportation Facilities and Equipment Management System

§ 500.601 Purpose.

The purpose of this subpart is to set forth requirements for development, establishment, implementation, and continued operation of a system for managing public transportation facilities and equipment (PTMS) in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part.

§ 500.603 PTMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Public transportation facilities and equipment management system (PTMS) means a systematic process that collects and analyzes information on the condition and cost of transit assets on a continual basis. It identifies needs as inputs to the metropolitan and statewide planning processes enabling decisionmakers to select cost-effective strategies for providing and maintaining assets in a serviceable condition.

Transit assets means public transportation facilities (e.g., maintenance facilities, stations, terminals, transit related structures), equipment, and rolling stock.

§ 500.605 PTMS general requirements.

(a) Each State shall develop, establish, and implement on a continuing basis a PTMS that covers urban and rural area public transportation systems operated by the State, local jurisdictions, public transportation agencies and authorities, and private (for profit and non-profit) transit operators receiving funds under Federal Transit Act sections 3, 9 (capital and operating), 16, or 18 (49 U.S.C. app. 1602, 1607a, 1612, or 1614) and public transportation systems operated by contracted service providers with capital equipment funded under Federal Transit Act sections 3, 9, 16 or 18.

(b) The PTMS shall be developed, established, and implemented in cooperation with recipients and subrecipients of funds under Federal Transit Act sections 3, 9, 16, or 18.

(c) Transit assets shall be designed to accommodate current and predicted use or ridership in a safe and cost effective manner.

(d) Because of their interrelationship, the development, establishment, and implementation of the PTMS shall be coordinated with the development, establishment, and implementation of the congestion management system and the intermodal management system described in subparts E and G, respectively, of this part.

§ 500.607 PTMS components.

(a) *Identification of condition measures.* Measures and standards suitable for evaluating the condition of the transit assets shall be developed. The measures and standards shall reflect State, metropolitan planning organization, and local transit operator goals and objectives for safety, efficiency, and reliability. The standards shall reflect the necessity to maintain transit assets in a good state of repair.

(b) *Data collection and system monitoring.* Data collection and system monitoring for the PTMS shall be coordinated with data for the congestion management, intermodal management, and traffic monitoring systems and shall include, as a minimum:

(1) Base year comprehensive inventory of the transit assets. For each type of asset in the inventory, information collected should include age, condition, remaining useful life, and replacement cost. Transit asset data shall be collected in cooperation with metropolitan planning organizations and transit operators at a frequency and level of detail appropriate to the type of capital stock of the transit system.

(2) Number of vehicles and ridership data for dedicated transit rights-of-way (e.g., rail and busways), at the maximum load points for the peak period in the peak direction and for the daily time period. Data related to highway transit vehicles and ridership will be collected as part of the highway traffic monitoring system as specified in subpart H of this part.

(c) *Identification and evaluation of proposed strategies and projects.* Information provided by data collection and system monitoring activities shall be used to determine the condition of all transit assets previously inventoried, needs and schedules for major maintenance or replacement, and the estimated replacement costs.

(d) *Implementation of strategies and projects.* The costs, potential funding sources, and priorities of proposed strategies and projects shall be identified. The strategies and projects shall be evaluated for potential inclusion in metropolitan and statewide transportation plans and improvement programs.

§ 500.609 PTMS compliance schedule.

(a) By October 1, 1994, the State shall develop a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the PTMS by October 1, 1996.

(b) By October 1, 1995, condition measures and data system structure shall be established and data collection shall be underway.

(c) By October 1, 1996, the PTMS shall be fully operational and shall provide projects and programs for consideration in developing metropolitan and statewide transportation plans and improvement programs.

Subpart G—Intermodal Facilities and Systems Management System

§ 500.701 Purpose.

The purpose of this subpart is to set forth requirements for development, establishment, implementation, and continued operation of a system for managing intermodal facilities and systems (IMS) in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part.

§ 500.703 IMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Intermodal facility means a transportation element that accommodates and interconnects

different modes of transportation and serves intrastate, interstate, and international movement of people and goods. Intermodal facilities include, but are not limited to, highway elements providing terminal access, coastal, inland and Great Lakes ports, canals, pipeline farms, airports, marine and/or rail terminals, major truck terminals, transit terminals including park and ride facilities, intercity bus terminals.

Intermodal management system (IMS) means a systematic process of identifying key linkages between one or more modes of transportation, where the performance or use of one mode will affect another, defining strategies for improving the effectiveness of these modal interactions, and evaluation and implementation of these strategies to enhance the overall performance of the transportation system.

Intermodal system means a transportation network consisting of public and private infrastructure for moving people and goods using various combinations of transportation modes.

§ 500.705 IMS general requirements.

(a) Each State shall develop, establish, and implement, on a continuing basis, an IMS that provides efficient, safe, and convenient movement of people and goods through integration of transportation facilities and systems and that improves the coordination in planning, and implementation of air, water, and the various land-based transportation facilities and systems.

(b) The IMS shall address intermodal transportation needs by a process that considers the following issues:

(1) *Connections.* The convenient, rapid, efficient, and safe transfers of people and goods among modes that characterize comprehensive and economic transportation service.

(2) *Choices.* Opportunities afforded by modal systems that allow transportation users to select their preferred means of conveyance.

(3) *Coordination and cooperation.* Collaborative efforts of planners, users, and transportation providers to resolve travel demands by investing in dependable, high-quality transportation service either by a single mode or by two or more modes in combination.

(c) The IMS shall consider the movement of both people and goods, alternatives for meeting transportation demands involving combinations of modes, and provide timely and appropriate information for intermodal transportation decisions for site-specific intermodal facilities, as well as the systems necessary to achieve the most efficient transportation movement.

(d) Because of their interrelationship, the development, establishment, and implementation of the IMS shall be coordinated with the development, establishment, and implementation of the congestion management system and the public transportation management system described in subparts E and F, respectively, of this part.

(e) In metropolitan planning areas that have more than one MPO and/or include more than one State, the development, establishment, and implementation of the IMS shall be coordinated to ensure consistency in the development of intermodal facilities, systems, plans, and programs.

§ 500.707 IMS components.

(a) *Identification of intermodal facilities.* The IMS shall identify intermodal facilities and intermodal transportation systems and establish the demands placed upon them to accommodate intrastate, interstate, and/or international movements of people and goods.

(b) *Identification of performance measures.* Parameters shall be identified that are suitable to measure and evaluate the efficiency of intermodal facilities and systems in moving people and goods from origin to destination. Parameters may include the total travel time, cost, and volumes for moving cargo and passengers, origins and destinations, capacity, accidents, ease of access, perceived quality, and the average time to transfer people or freight from one mode to another. Since the expectations and measurements of transportation quality of service vary between communities and industries, performance measures shall be established cooperatively at the State and local levels with private sector coordination, as appropriate.

(c) *Data collection and system monitoring.* The IMS shall include a continuing data collection and system monitoring program that is coordinated with data collection and system monitoring programs for the congestion management, public transportation management, and traffic monitoring systems. It shall include a base year inventory consisting of physical and operational characteristics of intermodal facilities and systems, and surveys of the operational and physical characteristics of intermodal facilities and systems based on performance measures established by State and local transportation agencies. Operational characteristics may include time, cost, capacity, and usage. This information should be obtained, to the extent possible, from the ongoing metropolitan and statewide planning processes. States shall coordinate their data collection programs with programs of the U.S. DOT.

(d) *System and facility efficiency evaluation.* Data collection and system monitoring shall be used by the States and local agencies to evaluate the performance of intermodal facilities and systems to determine the efficiency of the movement of people and goods.

(e) *Strategy and action identification and evaluation.* Statewide and local strategies and actions that improve the intermodal efficiency for the movement of people and goods shall be developed and evaluated. Methods for increasing productivity and the use of advanced technologies (such as, high speed rail) and innovative marketing techniques (such as, just-in-time delivery) shall be evaluated where appropriate. The evaluation program shall determine what project or combination of projects and actions would most effectively improve the intermodal productivity of transportation systems, in terms of the established performance measures, for both the short and long term.

§ 500.709 IMS compliance schedule.

(a) By October 1, 1994, the State shall develop a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the IMS by October 1, 1996. Intermodal facilities shall be inventoried and data collection activities shall be initiated.

(b) By October 1, 1995, performance measures and standards shall be established, system design shall be completed or underway in accordance with the State's work plan, and full-scale data collection shall be underway.

(c) By October 1, 1996, the IMS shall be fully operational and shall provide projects and programs for consideration in developing metropolitan and statewide transportation plans and improvement programs.

Subpart H—Traffic Monitoring System for Highways

§ 500.801 Purpose.

The purpose of this subpart is to set forth requirements for development, establishment, implementation, and continued operation of a traffic monitoring system for highways (TMS/H) in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part. Requirements for traffic monitoring for non-highway public transportation facilities and equipment is included in subpart F of this part.

§ 500.803 TMS/H definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a)

and § 500.103 are applicable to this subpart. As used in this part:

Highway traffic data means data used to develop estimates of the amount of person or vehicular travel, vehicle usage or vehicle characteristics associated with a system of highways or with a particular location on a highway. These types of data support the estimation of the number of vehicles traversing a section of highway or system of highways during a prescribed time period (traffic volume), the portion of such vehicles that may be of a particular type (vehicle classification), the weights of such vehicles including the weight of each axle and associated distances between axles on a vehicle (vehicle weight), or the average number of persons being transported in a vehicle (vehicle occupancy).

Traffic monitoring system for highways means a systematic process for the collection, analysis, summary, and retention of highway related person and vehicular traffic data, including public transportation on public highways and streets.

§ 500.805 TMS/H general requirements.

(a) Each State shall develop, establish, and implement, on a continuing basis, a TMS/H to be used by Federal departments and agencies, States, local governments, other public agencies, or private agencies when:

(1) The data are supplied to the U.S. Department of Transportation (U.S. DOT);

(2) The data are used in support of the management systems required under 23 U.S.C. 303;

(3) The data are used in support of studies or systems which are the responsibility of the U.S. DOT;

(4) The collection of the data is supported by the use of Federal funds provided from programs of the U.S. DOT;

(5) The data are used in the apportionment or allocation of Federal funds;

(6) The data are used in the design or construction of a Federal-aid project; or

(7) The data are required as part of a federally mandated program.

(b) The TMS/H should be based on the concepts described in the American Association of State Highway and Transportation Officials (AASHTO) "AASHTO Guidelines for Traffic Data Programs" [1] and the FHWA "Traffic Monitoring Guide," [2] and shall be consistent with the HPMS Field Manual.[3]

(c) The TMS/H shall cover all public roads except those functionally classified as local or rural minor collector or those that are federally owned. Coverage of federally owned public roads shall be determined cooperatively by the State, the FHWA, and the agencies that own the roads.

(d) The State's TMS/H shall apply to the activities of local governments and other public or private non-State government entities collecting data within the State if the collected data are to be used for any of the purposes enumerated in § 500.805(a) of this subpart.

(e) Procedures other than those referenced in this subpart may be used if the alternative procedures are documented by the State to furnish the precision levels as defined for the various purposes enumerated in § 500.805(a) of this subpart and are found acceptable by the FHWA.

(f) Nothing in this subpart shall prohibit the collection of additional traffic data if such data are needed in the administration or management of a highway activity or are needed in the design of a highway project.

§ 500.807 TMS/H components.

(a) *General.* Each State's TMS/H, including those using alternative procedures, shall affirmatively address the components in paragraphs (b) through (h) of this section.

(b) *Precision of reported data.* Traffic data supplied for the purposes identified in § 500.805(a) of this subpart shall be to the statistical precision applicable at the time of the data's collection as specified by the data users at various levels of government. A State's TMS/H shall meet the statistical precisions established by FHWA for the HPMS.

(c) *Continuous counter operations.* Within each State, there shall be sufficient continuous counters of traffic volumes, vehicle classification, and vehicle weight to provide estimates of changes in highway travel patterns and to provide for the development of day-of-week, seasonal, axle correction, growth factors or other comparable factors approved by the FHWA that support the development of traffic estimates to meet the statistical precision requirements of the data uses identified in § 500.805(a) of this subpart. As appropriate, sufficient continuous counts of vehicle classification and vehicle weight should be available to address traffic data program needs.

(d) *Short term traffic monitoring.* (1) Count data for traffic volumes collected in the field shall be adjusted to reflect annual average conditions. The estimation of annual average daily traffic will be through the appropriate application of only the following: Seasonal factors, day-of-week factors and when necessary, axle correction and growth factors or other comparable factors approved by the FHWA. Count data that have not been adjusted to represent annual average conditions will be noted as being unadjusted when they are reported. The duration and frequency of such monitoring shall comply to the data needs identified in § 500.805(a) of this subpart.

(2) Vehicle classification activities on the National Highway System (NHS), shall be sufficient to assure that, on a cycle of no greater than three years, every major system segment (defined as between interchanges or intersections of principal arterials of the NHS with other principal arterials of the NHS) will be monitored to provide information on the numbers of single-trailer combination trucks, multiple-trailer combination trucks, two-axle four-tire vehicles, buses and the total number of vehicles operating on an average day. If it is determined that two or more continuous major system segments have both similar traffic volumes and distributions of the vehicle types identified above, a single monitoring session will be sufficient to monitor these segments. Until the NHS is approved by the Congress, these procedures shall apply to the principal arterial system in each State.

(e) *Vehicle occupancy monitoring.* As deemed appropriate to support the data uses identified in § 500.805(a) of this subpart, data will be collected on the average number of persons per automobile, light two-axle truck, and bus. The duration, geographic extent and level of detail shall be consistent with the intended use of the data, as cooperatively agreed to by the organizations that will use and the organizations that will collect the data. Such vehicle occupancy data shall be reviewed at a minimum of every three years and updated as necessary. Acceptable data collection methods include roadside monitoring, traveler surveys, the use of administrative records, such as, accident reports,

[1] *AASHTO Guidelines for Traffic Data Programs*, 1992, ISBN 1–56051–054–4, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., suite 225, Washington, DC 20001. Available for inspection as prescribed in 49 CFR part 7, appendix D.

[2] *Traffic Monitoring Guide*, DOT/FHWA, publication No. FHWA-PL–92–017, October 1992. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

[3] *Highway Performance Monitoring System (HPMS) Field Manual for the Continuing Analytical and Statistical Data Base*, DOT/FHWA, August 30, 1993 (FHWA Order M5600.1B). Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

reports developed in support of public transportation programs or any other method mutually acceptable to the responsible organizations and the FHWA.

(f) *Field operations.* (1) Each State's TMS/H shall include the testing of equipment used in the collection of highway traffic data. This testing shall be based on documented procedures developed by the State. This documentation will describe the test procedure as well as the frequency of testing. Standards of the American Society for Testing and Materials or guidance from the AASHTO may be used. Only equipment passing the test procedures will be used for the collection of data for the purposes identified in § 500.805(a) of this subpart.

(2) Documentation of field operations shall include the number of counts, the period of monitoring, the cycle of monitoring, and the spatial and temporal distribution of count sites. Copies of the State's documentation shall be provided to the FHWA when it is initially developed and after each revision.

(g) *Source data retention.* For estimates of traffic or travel, the value or values collected during a monitoring session, as well as information on the date(s) and hour(s) of monitoring, will remain available until the traffic or travel estimates based on the count session are updated. Data shall be available in formats that conform to those in the version of the TMG current at the time of data collection or as then amended by the FHWA.

(h) *Office factoring procedures.* (1) Factors to adjust data from short term monitoring sessions to estimates of average daily conditions shall be used to adjust for month, day of week, axle correction, and growth or other comparable factors approved by the FHWA. These factors will be reviewed annually and updated at least every three years.

(2) The procedures used by a State to edit and adjust highway traffic data collected from short term counts at field locations to estimates of average traffic volume shall be documented. The documentation shall include the factors discussed in paragraph (h)(1) of this section. The documentation shall remain available for the same duration as the traffic or travel estimates discussed in paragraph (g) of this section remain current. Copies of the State's documentation shall be provided to the FHWA when it is initially developed and after each revision.

§ 500.809 TMS/H compliance schedule.

(a) By October 1, 1994, the State shall develop a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the TMS/H for the NHS (or the principal arterial system until the NHS is approved by the Congress) by October 1, 1995, and on all other public highways, other than those functionally classified as local or rural minor collector, by October 1, 1996.

(b) By October 1, 1995, the TMS/H for the NHS shall be fully operational and in use (or the principal arterial system until the NHS is approved by the Congress) and the TMS/H for all other public highways, other than those functionally classified as local or rural minor collector, shall be in operation or under development in accordance with the State's work plan.

(c) By October 1, 1996, the TMS/H shall be fully operational and in use for all public highways, other than those functionally classified as local or rural minor collector.

PART 626—[REMOVED]

2. Part 626 is removed.

49 CFR CHAPTER VI

3. Part 614 is added to 49 CFR Chapter VI to read as follows:

PART 614—TRANSPORTATION INFRASTRUCTURE MANAGEMENT

Sec.

614.101 Cross-reference to management systems.

Authority: 23 U.S.C. 303; 49 U.S.C. app. 1607; and 49 CFR 1.48 and 1.51.

§ 614.101 Cross-reference to management systems.

The regulations in 23 CFR part 500, subparts A, E, F, and G, shall be followed in complying with the requirements of this part. 23 CFR part 500, subparts A, E, F, and G, implement 23 U.S.C. 303 for State development, establishment, and implementation of systems for managing traffic congestion (CMS), public transportation facilities and equipment (PTMS), and intermodal transportation facilities and systems (IMS).

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Wednesday
December 1, 1993

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 20 and 21

Migratory Bird Hunting and Permits; Supplemental Notice of Review; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

Migratory Bird Hunting and Migratory Bird Permits; Supplemental Notice of Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier notice of intent, to review the regulations on migratory bird hunting and migratory bird permits. The Service has begun to review these regulations and has identified issues, needed changes, and possible alternatives. This supplementary document describes the issues and provides additional information that will facilitate public comment on these regulations.

DATES: Comments should be received by January 31, 1994.

ADDRESSES: Written comments by interested parties concerning this review should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington Virginia 22203-3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, room 500, Arlington, Virginia, between the hours of 8 a.m. and 4 p.m., Monday through Friday. Comments received will be available for public inspection during the hours listed above.

FOR FURTHER INFORMATION CONTACT: Frank S. Shoemaker, Jr., Special Agent in Charge, Investigations, Division of Law Enforcement, at the address given above; Telephone Number (703) 358-1949.

SUPPLEMENTARY INFORMATION:

Background

On Thursday, November 14, 1991, the Service published, in Volume 56, No. 220 of the **Federal Register**, a notice of intent to review 50 CFR parts 12, 13, 14, 20, 21, and 22. The Service, in this notice requested that all interested parties submit written comments. In response to this request the Service received comments from a total of 67 individuals and organizations. Specifically, written comments were received in response to the Service's request from 36 individuals, 11 government agencies, 8 sportsman associations, 1 American Indian Tribe, 3 scientific associations and 7 wildlife management and conservation associations.

This supplemental notice deals specifically with those regulations found in part 20 (exclusive of subpart K) and part 21 (subpart D only), and supplies information which will assist the States and the public to focus their comments and suggestions. These regulations are perceived by many individuals as being unclear. The Service, therefore, would like to clarify those areas of 50 CFR which have traditionally caused concern. The Service will publish summaries of written comments received in response to these notices at the time proposals are developed and published.

Issues

Issues related to this review are documented below in the same order the appropriate regulations are currently found in 50 CFR parts 20 and 21. Only those issues or alternatives that would significantly change the meaning or applicability of current regulations are discussed below. Those changes which merely update outdated information or fix technical errors are not included below.

Part 20 Migratory Bird Hunting

Subpart A - Introduction

Only minor editorial suggestions which would result in no substantive change have been received.

Subpart B - Definitions

Section 20.11 Meaning of Terms. The Service is considering simplifying this section through reorganization and rewriting of definitions, as well as adding several definitions.

The definitions of daily bag and possession limits could be simplified and could include limits for individual species or combination of species. One suggestion is to remove the language explaining which limit applies when a hunter harvests game in more than one geographical area from this definition section. Instead, this could be better addressed in *§20.24 Daily Bag Limit* and *§20.33 Possession Limit.*

The definitions of *Baiting* and *Baited Area* could be added to this definition section for clarity and consistency. It has been suggested that the language related to "shelled, shucked, or unshucked corn wheat, or other grain, salt, or other feed" could be simplified. An alternative that could be considered is "any grain, salt or other feed".

The definition of *Nontoxic Shot* could be added to this definition section and a list of approved shot and coatings would then be readily accessible.

The definition of *Take*, as currently found in *§10.12 Definitions*, could be added to this definition section. The word "take" is used frequently in this part and the definition located in close proximity might facilitate a better understanding of the regulations.

It was also suggested that the definition of *Waterfowl* could be added to this definition section.

Subpart C - Taking

The Service is considering adding a section to this subpart which would require hunters to present their game, equipment, and documents to law enforcement personnel upon request.

The Service is considering creating a new section which can be used to incorporate the provision, currently located in the annual regulations, which addresses quota-zone closures. This section would delineate responsibilities for closing the season in quota zones once the quota has been achieved.

Section 20.20 Migratory Bird Harvest Information Program. This section which implements the program has been added to this subpart during the last year. Additional changes, including additions of States, will occur during the next few years as the program is phased in and modified. Such adjustments will continue to be handled as a separate rulemaking process and comments and suggestions will continue to be welcomed by the Office of Migratory Bird Management throughout the rulemaking period.

Section 20.21 Hunting Methods. Several modifications, including deletions, additions, and reorganization, are being considered in order to clarify these regulations. In addition, several substantive changes have been suggested:

The Service has published a notice of intent to limit the size of shot, length of shells, and to develop a coatings approval process. These issues will be handled in a separate series of proposed and final rules. Comments and suggestions on these changes should be forwarded to the Office of Migratory Bird Management.

Paragraph (c) Concealment: Recently, structures which are attached to the bottom of the ocean and afford hunters concealment below the surface of the water have proliferated. The Service is concerned about the use of these structures in off-shore areas. Therefore, we are considering limiting the use of these structures as we currently do for sinkboxes.

Paragraph (e) Motor and sail boats: The Service is considering limiting the provision that allows taking of crippled birds by boats under power in the

special sea duck areas to exclude all birds other than scoters, eiders, and oldsquaw.

Paragraph (f) Live decoys: It has been suggested that the prohibition against hunting over live decoys could be expanded to cover all migratory game birds.

Paragraph (g) Calls: The Service is considering expanding the prohibition against the use of electronic calls to eliminate the possession of electronic calls while hunting migratory birds.

Paragraph (i) Baiting: Several possible changes have been discussed relative to the current regulations. Each of these possible changes may be considered independently or in combination with other possible changes. These possibilities are listed below:

(1) Link normal agricultural operations to the published guidelines of the State Agricultural Extension Service.

(2) Eliminate the hunting of migratory birds over freshly planted fields.

(3) Standardize language for all migratory birds, yet maintain simplified language that would allow the taking of doves over areas manipulated for wildlife-management purposes.

(4) Simplify the language related to "shelled, shucked, or unshucked corn wheat, or other grain, salt, or other feed" -- other alternatives may be considered, such as "any grain, salt or other feed".

Paragraph (j) Nontoxic shot: It has been suggested that the list of species for which nontoxic shot is required could be expanded to include additional species, such as all of the family Rallidae, or even other wetland-related species.

Section 20.24 Daily limit. The Service is considering modifying this section to emphasize that hunters must cease hunting once the bag limit has been achieved and to clarify which bag limit applies when a hunter harvests game in more than one geographic area.

Because some confusion exists among the public about birds that are crippled but not retrieved, there is a need to clarify that crippled birds do count toward the daily bag limit. One suggestion was to remove the word "take" and substitute more specific language.

Section 20.25 Wanton waste of migratory game birds. The Service is considering strengthening this section.

Subpart D - Possession

Section 20.33 Possession Limit. The Service is considering modifying this section to clarify which possession limit applies when a hunter harvests game in more than one geographic area.

Section 20.36 Tagging requirement. The Service is considering the addition of language that would prohibit falsifying tags. The tagging requirement may also be strengthened by prohibiting "co-mingling" of harvested birds.

Subpart E - Transportation Within the United States

Section 20.43 Species identification requirement. It has been suggested that the exception to this requirement should only apply to mourning doves and not to all doves and pigeons.

Subpart H - Federal, State, and Foreign Law

The Service is considering adding a section prohibiting the violation of Indian Tribal law.

Section 20.71 Violation of Federal law. The Service is considering expanding this section to apply to imports, and to clarify that it includes crows.

Section 20.72 Violation of State law. The Service is considering expanding this section to apply to imports, and to clarify that it includes crows.

Section 20.73 Violation of foreign law. The Service is considering expanding this section to apply to imports and exports, and to clarify that it includes crows.

Subpart J - Feathers or Skins

Section 20.91 Commercial use of feathers. The Service is considering eliminating the provision for sale of seized and condemned feathers and the provision for sale of feathers for "similar commercial uses".

Section 20.92 Personal use of feathers or skins. The Service plans to reiterate that fresh or frozen skins of migratory game birds count as part of the possession limit.

Subpart K - Annual Seasons, Limits, and Shooting Hours Schedules

The Service is considering combining the various sections *(§§20.101-107)* that contain annual regulations into one section to facilitate State selection and publication of seasons.

Section 20.108 Nontoxic shot zones. The Service will delete this section because the nationwide phase-in of the nontoxic shot requirement for hunting waterfowl has been completed.

Subpart L - Administrative and Miscellaneous Provisions

Section 20.131 Extension of Seasons. The Service is considering deleting this section because it has seldom been used and may not be warranted.

Section 20.133 Hunting regulations for crows. The Service plans to clarify that, in *Part 20 Migratory Bird Hunting*, only the provisions of this section and *Subpart H - Federal, State, and Foreign Law* apply to crows. For instance, the limitations to taking contained in *§20.21 Hunting Methods* do not apply to crows.

The Service is considering the addition of a limitation which would close the sport hunting season for crows in States where the seasons do not conform with the limitations of this section.

Subpart M - Criteria and Schedule for Implementing Nontoxic Shot Zones for the 1987–1988 and Subsequent Waterfowl Hunting Seasons

The contents of Subpart M will be deleted and that subpart reserved for future use because the requirement for use of nontoxic shot has been implemented nationwide and this subpart is no longer needed.

Subpart N - Special Procedures for Issuance of Annual Hunting Regulations

Section 20.153 Regulations Committee. The Service is planning to revise this section to reflect the addition of Flyway Council Consultants to the early-season regulations process.

Part 21 Migratory Bird Permits

Subpart D - Control of Depredating Birds

Section 21.41 Depredation permits. It has been suggested that the Service consider adding additional flexibility to the issuance of permits to allow exceptions to the conditions listed in paragraph (c). For instance, it may be possible to allow the use of concealment or device to attract birds within gun range, provided that it is specifically authorized on the permit.

Section 21.42 Authority to issue depredating orders to permit the killing of migratory game birds. It has been suggested that the Service could broaden this provision to include the issuance of depredation orders for nongame birds. Accordingly, the provision for disposal would then be modified to reflect the addition of nongame birds to this section. It also has been suggested that the Service clarify that this section can be implemented with publication of a notice in the **Federal Register.**

The Service believes that certain organizational changes may aid the users of these regulations. The provisions of this section could be distinguished by the use of subtitles. The paragraph regarding State law could be expanded and paragraphs regarding inspection and reporting could be added for consistency with other sections in this subpart.

Section 21.43 Depredation order for blackbirds, cowbirds, grackles, crows, and magpies. It has been suggested that the Service add a paragraph regarding methods of take to clarify which methods are allowed. The Service is considering methods of take which would limit taking to the use of shotguns no larger than 10 gauge, only on or over threatened area, but would allow blinds and means of concealment, decoys, calls or other devices to attract birds within gun range. However, the Service is still considering excluding electronic calls.

Again, the provisions of this section could be distinguished by the use of subtitles. A paragraph regarding reporting could be added for consistency with other sections in this subpart.

Section 21.44 Depredation order for designated species of depredating birds in California. It has been suggested that the Service add a paragraph regarding methods of take to clarify which methods are allowed. The Service is considering methods of take which would limit taking to the use of shotguns no larger than 10 gauge, only on or over threatened area, but would allow blinds and means of concealment, decoys, calls or other devices to attract birds within gun range. However, the Service is still considering excluding electronic calls. It was further suggested for this section that the use of traps be allowed providing that such traps are checked often for nontarget species and that other guidelines regarding the use of traps be developed.

Again, the provisions of this section could be distinguished by the use of subtitles. Paragraphs regarding inspection and State law could be added for consistency with other sections in this subpart.

Section 21.45 Depredation order for depredating purple gallinules in Louisiana. It has been suggested that the Service consider deleting this section because it is apparently not needed.

In the event this section is not deleted, it was suggested that the Service add a paragraph regarding methods of take to clarify which methods are allowed. The Service would consider methods of take which would limit taking to the use of shotguns no larger than 10 gauge, only on or over threatened area, but would allow blinds and means of concealment, decoys, calls or other devices to attract birds within gun range. However, the Service would still consider excluding electronic calls.

Again, the provisions of this section could be distinguished by the use of subtitles.

Section 21.46 Depredation order for depredating scrub jays and Steller's jays in Washington and Oregon. It has been suggested that the Service consider deleting this section because it is apparently not needed as reflected in the lack of reporting which has occurred in recent years.

In the event this section is not deleted, it was suggested that the Service remove the provision which allows trapping. If the provision for trapping is maintained, it was suggested that such traps be checked often for nontarget species and that other guidelines regarding the use of traps be developed. In addition, it was suggested that other provisions governing methods of take be consistent with other sections of this subpart.

Again, the provisions of this section could be distinguished by the use of subtitles.

The Service is considering combining *§§ 21.43–21.46* into a single depredation order that would combine redundant language, but would also identify where different provisions apply.

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Authorship

The primary authors of this proposed rule are Frank Shoemaker, Jr., Division of Law Enforcement, and William O. Vogel, Office of Migratory Bird Management.

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority: The authority citation for 50 CFR part 20 is the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703-711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a-d and e-j).

The authority citation for 50 CFR part 21 is the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712).

Dated: November 18, 1993.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–29212 Filed 11–30–93; 8:45 am]

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federal register

Wednesday
December 1, 1993

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52
Federal Acquisition Regulation; Qualification Requirements; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 92-612]

Federal Acquisition Regulation; Qualification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are proposing a change to the clause at Federal Acquisition Regulation (FAR), Qualification Requirements, to preclude rejection of a sealed bid solely because the bidder has not submitted evidence of qualification at the time of bid opening.

DATES: Comments should be submitted on or before January 31, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAR case 92-612 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 92-612.

SUPPLEMENTARY INFORMATION:

A. Background

Paragraph (e) of the current clause at 52.209-1 may be inconsistent with the ruling of the General Accounting Office (GAO) in Gardner Zemke Company, B-238334, April 5, 1990. In order to remove the inconsistencies between paragraphs (b) and (e) of the clause in light of the GAO decision, the CAAC and DARC are proposing to rewrite paragraph (e) to make it clear that a contracting officer may not reject a bid solely for the reason that the bidder has not provided evidence of qualification at the time of bid opening.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule eliminates inconsistencies in the clause and will avoid improper rejection of bids. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92-612), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: November 22, 1993.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.209-1 is amended by revising the date of the clause and paragraph (e) to read as follows:

52.209-1 Qualification requirements.

* * * * *

QUALIFICATION REQUIREMENTS (DATE)

* * * * *

(e) If an offeror, manufacturer, source, product or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror must submit evidence of qualification prior to award of this contract. Unless determined to be in the Government's interest, award of this contract shall not be delayed to permit an offeror to submit evidence of qualification.

* * * * *

[FR Doc. 93-29348 Filed 11-30-93; 8:45 am]

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federal register

Wednesday
December 1, 1993

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 9 and 52
Federal Acquisition Regulation;
Debarment and Suspension Certificate;
Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 52

[FAR Case 92–615]

Federal Acquisition Regulation; Debarment and Suspension Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing a revision to the FAR provision dealing with debarment and suspension by adding "tax evasion" to the list of currently enumerated offenses for which the offeror must certify. Conforming changes are being made to specifically add "tax evasion" as a debarment or suspension cause.

DATES: Comments should be submitted on or before January 31, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAR case 92–615 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 92–615.

SUPPLEMENTARY INFORMATION:

A. Background

The Twentieth Report by the Committee on Government Operations entitled "Coins, Contracting, and Chicanery: Treasury and Justice Departments Fail to Coordinate" dated May 27, 1992, among other things, stated that there is a very real possibility that the U.S. Government is doing business with a man it has indicted as being one of the biggest tax evaders in history. In order to prevent this from happening in the future, a revision is being proposed to address tax evasion. Presently, the offenses that trigger the disclosure requirement under the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, FAR 52.209–5, include crimes connected with obtaining and performing public contracts, antitrust violations relating to the submission of offers, and other offenses indicative of a lack of business integrity such as bribery, embezzlement, theft, making false statements or receiving stolen property. Tax evasion is not presently listed as an offense requiring disclosure and clearly involves intentional deception of the Federal Government. Therefore, tax evasion also has a direct bearing on an offeror's record of integrity and business ethics, and accordingly would raise questions regarding the propriety of an award to the offeror.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because offerors must already certify whether they have been convicted of or had a civil judgment rendered against them for a list of offenses. This rule will add "tax evasion" to the existing certification, as well as to the list of offenses for which contractors may be suspended or debarred from Federal contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92–615), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9 and 52

Government procurement.

Dated: November 22, 1993.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 9 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 9 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

9.406–2 [Amended]

2. Section 9.406–2 is amended in paragraph (a)(3) by adding "tax evasion," after "false statements,".

9.407–2 [Amended]

3. 9.407–2 is amended in paragraph (a)(3) by adding "tax evasion," after "false statements," and removing "or" from the end of the paragraph; and at the end of paragraph (a)(4)(iii) removing the period and inserting "; or" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.209–5 [Amended]

4. Section 52.209–5 is amended by revising the date in the clause heading to read "(DATE)", and at paragraph (a)(1)(i)(B) of the clause by adding "tax evasion," after "false statements,".

[FR Doc. 93–29349 Filed 11–30–93; 8:45 am]

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federal register

Wednesday
December 1, 1993

Part VI

Environmental Protection Agency

40 CFR Parts 372 and 721

Ozone Depleting Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know; Addition of Chemicals; Significant New Use Rule; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400065A; FRL–4648–5]

Ozone Depleting Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 3, 1991, EPA received a petition from the Natural Resources Defense Council, Friends of the Earth, and the Environmental Defense Fund to add the hydrochlorofluorocarbons (HCFCs) listed as Class II ozone-depleting substances in section 602(b) of the Clean Air Act (CAA) to the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) section 313 list. In response to that petition, EPA is adding 11 HCFCs to the list of toxic chemicals subject to reporting under section 313 of EPCRA and section 6607 of the Pollution Prevention Act (PPA). These chemicals are HCFC-22, HCFC-123 (and isomers), HCFC-124 (and isomers), HCFC-141b, and HCFC-142b. The first reports for these chemicals will be due July 1, 1995, to cover the 1994 reporting year.

DATES: This rule is effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, Toll free TDD: 800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is issued under section 313(d) and (e)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99–499, "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was composed of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals to or from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. In the past, EPA has added and deleted chemicals to and from the statutory list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Description of Petition and Rationale for Listing

A. Summary of Petition and EPA's Review

On December 3, 1991, EPA received a petition from the Natural Resources Defense Council, Friends of the Earth, and the Environmental Defense Fund to add methyl bromide and the hydrochlorofluorocarbons (HCFCs) listed as Class II ozone-depleting substances in section 602(b) of the Clean Air Act (CAA) to the EPCRA section 313 list. In addition, the petitioners requested that the Agency add methyl bromide under CAA section 602 and accelerate the phase-out schedule of Class I and Class II substances under CAA section 606(a)(1).

This final rule addresses only the EPCRA section 313 portion of the petition. Methyl bromide (bromomethane) is already a listed toxic chemical under EPCRA section 313 and thus will not be addressed further in this final rule. The petitioners contend that HCFCs present an imminent and substantial endangerment to public health, welfare, and the environment because they deplete stratospheric ozone. EPA granted the petition and published a proposed rule in the **Federal Register** of June 24, 1992 (57 FR 28159), to add a category of HCFCs to the EPCRA section 313 list of toxic chemicals and request comments on alternative approaches to the one proposed. In the proposal, EPA raised the alternative approach of adding individual HCFCs that are in production or anticipated to be commercially viable, rather than adding a category of chemicals to the list. In the interest of expeditiously providing the public with release data on specific HCFCs, EPA has decided to adopt the alternative approach, with some modifications, in this final rule.

EPA has already extensively evaluated the risks of ozone depletion and the role of chlorofluorocarbons (CFCs), halons, and HCFCs in that depletion, and published its findings in several documents which were used as the basis of EPA's review of this petition. For a discussion of these evaluations, see the proposed rule and the references listed in the proposed rule. (Copies are available in the public docket.) EPA considers the HCFCs to be transitional substances which are critical to the full phase-out of the CFCs. HCFCs have lower ozone-depletion potentials (ODPs) than CFCs and are being developed as first generation substitutes for many CFC uses. However, because HCFCs add chlorine to the stratosphere, thereby causing ozone depletion, EPA is concerned about the extent of their production and use as well. Thus, while the HCFCs serve as substitutes for CFCs, and facilitate the CFC phase-out, HCFCs will eventually be phased out of production and use as well.

EPA's concerns for HCFCs do not focus on direct toxicity, but rather on the depleting effect they have on stratospheric ozone and the resulting increase in penetration of ultraviolet-B (UV-B) radiation. HCFCs are known to release chlorine radicals into the stratosphere. Chlorine radicals act as catalysts to reduce the net amount of stratospheric ozone.

Stratospheric ozone shields the earth from UV-B radiation (i.e., 290 to 320 nanometers). Decreases in total column ozone will increase the percentage of UV-B radiation, especially at its most harmful wavelengths, reaching the earth's surface. Because HCFCs have a shorter atmospheric lifetime, they contribute fewer chlorine radicals to the stratosphere than equal masses of CFCs. However, they still pose a substantial concern for ozone depletion, which will increase as HCFC use increases. EPA expects HCFC use to increase significantly as CFCs are phased out. Exposure to UV-B radiation is known to cause various adverse human health and environmental effects, which were discussed in detail in the proposed rule (57 FR 28159) and are summarized in this final rule.

B. Summary of Health and Environmental Concerns for HCFCs

Exposure to UV-B radiation has been identified by laboratory and epidemiologic studies as a cause of two types of nonmelanoma skin cancers: squamous cell cancer and basal cell cancer. Studies suggest that UV-B radiation plays an important role in causing malignant melanoma skin cancer; demonstrate that UV-B radiation can suppress the immune response system in animals, and, possibly, in humans; show that increases in exposure to UV-B radiation are likely to increase the incidence of cataracts and could adversely affect the retina; and suggest that increased UV-B penetration may increase the rate of tropospheric ozone formation. Available data suggest that tropospheric ozone exposure may lead to chronic health effects, including morphological changes to, and impaired functioning of, the lungs.

Aquatic organisms, particularly phytoplankton, zooplankton, and the larvae of many fishes, appear to be susceptible to harm from increased exposure to UV-B radiation because they spend at least part of their time at or near the surface of waters they inhabit. Increased UV-B penetration has also been shown to result in adverse impacts on plants and crops.

III. Summary of Public Comment

On June 24, 1992, EPA issued in the **Federal Register** (57 FR 28159) a proposed rule that would add the HCFCs as a category to the section 313 list. EPA also requested comments on alternative methods of listing the HCFCs. The public comment period closed on August 24, 1992. EPA received 19 comments on the proposed rule by the close of the comment period and 2 more subsequent to that. Some commenters supported the addition of a category of HCFCs because it would have a lower reporting burden as compared to individual listing. This is because only one report would have to be submitted for a category of chemicals as compared to specific reports for each HCFC. However, some of the commenting industry representatives as well as the environmental groups preferred individual listing of HCFCs, albeit for different reasons.

Some industry commenters contend that section 313 of EPCRA does not allow the addition of categories of chemicals to the list of toxic chemicals subject to reporting and that EPA must conduct a review of each individual chemical proposed for addition to the list. In addition, these and other commenters claim that EPA must show that the chemicals proposed to be listed demonstrate the effects of concern.

EPA believes it has the discretion to add a category of chemicals to the EPCRA section 313 list under its authority to modify that list. However, EPA is adding the 11 HCFCs as individual chemicals and not in a category because it believes that individual listing of the HCFCs best serves the current needs for information of the public as well as the Agency. Individual listing would require identification and reporting on specific HCFCs in production and use, which would provide an indication of whether industry is moving to the manufacture of HCFCs with low ODPs. Individual listing of the HCFCs is supported by several industry commenters as well as the environmental and public interest groups that commented. As discussed in the proposed rule, EPA has established that the HCFCs listed under section 602(b) of the CAA have the potential to deplete ozone in the stratosphere, thereby increasing penetration of UV-B radiation to the earth's surface. As discussed in Unit II.B. of this preamble, increased exposure to UV-B radiation is known or can reasonably be anticipated to cause adverse human health and environmental effects. This is sufficient basis for adding HCFCs to the EPCRA section 313 list.

EPA considered other regulatory options it could take in response to the petition. One commenter proposed that the HCFCs identified in the proposed rule be listed individually and a category be established for all the other HCFCs. This would make data available for HCFCs currently in use and production and would require reporting of other HCFCs that could come into production in the future without further rulemaking activity. Building on this option, EPA also considered listing the 11 produced or commercially viable HCFCs individually and creating a category for other HCFCs and establishing a procedure for adding individual HCFCs to the section 313 list through expedited rulemaking. However, EPA believes it is best at this time to simply establish a reporting requirement for HCFCs currently in production or believed to be commercially viable. If other HCFCs come into production in the future that are of concern, EPA can initiate rulemaking to add those chemicals to the EPCRA section 313 list.

Many of the industry commenters contend that the HCFCs should not be listed under section 313 because they exhibit low or no direct toxicity. They assert that Congress intended that the section 313 list of toxic substances include only chemicals that induce direct toxicity, and that Congress did not intend the list to include chemicals which are only indirectly toxic.

The information on health effects induced by HCFCs has been reviewed by the Agency and generally supports the contention that these chemicals exhibit low or no direct toxicity. The concerns about these chemicals are based on their depleting effect on stratospheric ozone and the resulting increase in penetration of UV-B radiation, causing the adverse environmental and human health effects listed in Unit II.B. of this preamble. Congress recognized the adverse effects of releases of HCFCs in the Clean Air Act Amendments of 1990 (CAAA) by mandating a phase-out and eventual ban of HCFCs. HCFCs are to be phased out according to the schedule outlined in section 605(b) of the CAAA. Production of the HCFCs listed in section 602(b) of the CAAA will cease by January 2030. Because of the adverse human health and environmental effects which would result from the increased UV-B radiation as a result of stratospheric ozone depletion by HCFCs, EPA believes that these chemicals meet the statutory criteria for listing.

EPCRA allows EPA to add a chemical to the section 313 list if the chemical is "known to cause or can reasonably be anticipated to cause" certain adverse human health or environmental effects. EPCRA does not limit EPA to considering only effects caused directly by a toxic chemical. EPA believes that indirect effects can and should be considered in determining whether or not a chemical should be subject to reporting under section 313.

Indirect toxicity was the basis for the granting of a petition to add seven CFCs and halons (August 30, 1990, 55 FR 31594). The fate of HCFCs in the stratosphere is similar to the fate of CFCs and halons in that chlorine radicals are released which can then act as catalysts to reduce the net amount of stratospheric ozone. Indirect toxicity has also been a criterion used to support the denial of petitions to delete volatile organic compounds (VOCs) from the section 313 list, specifically, the ethylene and propylene petition (January 27, 1989, 54 FR 4072) and the cyclohexane petition (March 15, 1989, 54 FR 10668). VOCs react under certain environmental conditions in the troposphere to generate ozone, which induces a number of health effects.

Several industry commenters question the validity of the connection between HCFCs and increased UV-B radiation, stating that some data indicates that there has been a decrease in UV-B

radiation reaching the earth's surface. To support this assertion, one commenter cites a United Nation's Environment Programme report, "Environmental Effects of Ozone Depletion: 1991 Update (11/91)." This report expressed the possibility that the decreases were due to low-level atmospheric pollution preventing the penetration of UV-B radiation and stated that there were insufficient measurements with which to make a complete assessment.

These concepts had also been discussed in an article by Scotto, et al. ("Biologically Effective Ultraviolet Radiation: Surface Measurements in the United States, 1974 to 1985," *Science, 239*, 762 (1988)) which also presented the data on surface measurements of UV-B radiation that indicate that there has been a decline in the amount of UV-B penetration in the United States from 1974 to 1985. The authors do not conclude that the connection between ozone depletion and increased UV-B radiation is specious, but rather that "meteorological, climatic, and environmental factors in the troposphere may play a greater role in attenuating UV-B radiation than was previously suspected." Their conclusions are consistent with the vast majority of the science community who believe that the connection between HCFCs and increased UV-B radiation is valid. Since these reports do not rebut the contention that HCFCs are ozone depleters, but ascribe the reduction of UV-B radiation to other factors, EPA does not consider them relevant to its finding on HCFCs' indirect toxicity.

Several commenters contend that these chemicals should not be listed under section 313 because the potential adverse effects resulting from their release into the environment are not confined to the community in which the release occurs. The effects of stratospheric ozone depletion ultimately will be observed world-wide, not just in the areas which emitted these compounds. The commenters also contend that there is no immediate threat to those communities. While it is true that the effects of HCFC releases into the environment are largely global rather than localized, the statutory criteria for listing under section 313(d)(2)(B) and (C) do not address the location of the effect.

This issue was considered previously in evaluating the petitions on CFCs and halons as well as VOCs (ethylene, propylene, and cyclohexane). Although in some areas, such as the Los Angeles basin, releases of VOCs result in localized effects, the toxic effects of ozone at ground level are commonly observed at some distance from the community that emitted the VOCs. Much of the VOC releases do not remain in the vicinity of the facilities that released them.

Some commenters believe that HCFCs should not be added to the section 313 list because they are already subject to the reporting and recordkeeping requirements of the Montreal Protocol (Montreal Protocol on Substances that Deplete the Ozone Layer, September 16, 1987, 26 International Legal Materials (I.L.M.) 1541). Regulations promulgated under the Clean Air Act to implement the Montreal Protocol require producers and importers of HCFCs to report the amount of their production and importation. HCFCs are extremely stable chemicals. Given their chemical stability and the manner in which they are used, it is reasonable to anticipate that the amounts of HCFCs produced and, ultimately, used will be equivalent to the amount of HCFCs released into the environment. Releases could also occur after disposal of products containing HCFCs. The commenters argue that because production and release are equivalent, an additional requirement under section 313 would be duplicative and potentially misleading.

EPA agrees that it is realistic to view production of these chemicals as equivalent to eventual release, albeit over a potentially lengthy time. However, EPCRA requires reporting on releases from facilities, not releases of chemicals that occur from other sources, such as consumer use or disposal of a product containing that chemical. Therefore, the EPCRA reporting requirement provides different information and serves a distinctly different purpose than the regulations under the Clean Air Act. Since HCFCs meet the statutory criteria for addition to the EPCRA section 313 list, and since EPA believes the public can benefit from knowing the extent of HCFC release (as that term is defined under EPCRA) that takes place from facilities that manufacture, process, or use HCFCs, EPA believes it is appropriate to include the HCFCs on the EPCRA section 313 list. EPA does not believe this will mislead the public or create duplicative requirements.

One commenter objected to the listing because releases reported from facilities subject to section 313 will be a small fraction of the total releases of these chemicals to the environment. EPA agrees that releases from covered facilities reported under this section will be some fraction of all releases of HCFCs. However, the statutory criteria do not address the coverage of releases to be reported and EPA believes it is in the public interest for release data on the HCFCs to be available. Since they meet the statutory criteria for addition to the section 313 list and there is value in obtaining information on releases of HCFCs, EPA is granting the petition to list them.

Some commenters are concerned that placing these chemicals on the section 313 list will cause them to be considered "toxic" chemicals, and this label will result in increased regulations and handling restrictions, jeopardize the sale of products containing HCFCs, and could slow the phase-out of CFCs and transition to HCFCs. EPA does not contend that HCFCs in general are directly toxic. EPA hopes that industry, government, and the public will recognize and consider differences in degree and type of toxicity of different chemicals when making decisions about those chemicals. EPA doubts that adding HCFCs to the section 313 list will affect the transition from CFCs to HCFCs, and ultimately, to other substitutes. To the extent that substitutes that cause less indirect toxicity than HCFCs can be developed, EPA believes that such activity should be encouraged. Since the HCFCs meet the statutory criteria for listing, EPA believes that listing them will increase public awareness of their release and encourage the development of other substitutes.

IV. Explanation of this Addition

The 11 HCFCs listed in this final rule are added to the list of toxic chemicals subject to reporting under section 313 of EPCRA effective as of January 1, 1994. EPA identified five HCFCs in the proposed rule as in production or commercially viable: 22; 123; 124; 141b; and 142b. HCFCs 22, 141b, and 142b refer to specific chemicals (chlorodifluoromethane, 1,1-dichloro-1-fluoroethane, and 1-chloro-1,1-difluoroethane, respectively), while HCFC–123 and 124 refer to a group of isomers. There are four isomers of HCFC–123 and two isomers of HCFC–124. This final rule adds HCFC–22, HCFC–141b, HCFC–142b, and all of the isomers of HCFC–123 and 124, making 11 the total number of HCFCs added to the section 313 list.

These chemicals are either in production or believed to be commercially viable. Commercially viable HCFCs are those for which EPA has no direct evidence of current production, but which the Agency has a reasonable basis for believing could be readily put into production. For example, HCFC–123a, which is not currently in production, is an isomer of HCFC–123, which has been identified as

a potential substitute for CFC–11 in some foam blowing applications. Since HCFCs are first-generation substitutes for CFCs, EPA believes that the commercially viable HCFCs that are not in production could be produced as the CFC phase-out progresses.

EPA has used production volume as a criterion in responding to a petition to add certain chemicals and chemical categories that are on the Resource Conservation and Recovery Act list of hazardous wastes under 40 CFR 261.33(f) to the EPCRA section 313 list published elsewhere in this issue of the **Federal Register**. This criterion was used in order to ensure that chemicals added to the list would generate EPCRA section 313 reports. For the chemicals not added to the EPCRA section 313 list because their production volumes were lower than the reporting thresholds, EPA does not anticipate a significant change in their production in the near future. This assumption does not hold for the HCFCs, however, because HCFCs are the first generation substitutes for CFCs. It is therefore reasonable to predict that commercially viable HCFCs could be produced in the foreseeable future. Thus, EPA has included those HCFCs in this final rule.

As indicated, EPA's concerns for these chemicals do not focus on direct toxicity, but rather on the depleting effect these chemicals have on stratospheric ozone and the increase in penetration of UV-B radiation which would result. EPA has already conducted extensive analyses of available data on these chemicals in connection with the development of a rule limiting production and consumption of these chemicals in accordance with the Montreal Protocol. Based on the supporting documents for that rule, EPA believes that releases of these chemicals will lead to stratospheric ozone depletion resulting in increased penetration of UV-B radiation. Because this increased UV-B radiation can be reasonably anticipated to lead to cancer and other chronic human health effects and significant adverse environmental effects, EPA has determined that these chemicals meet the statutory criteria for listing found in section 313(d)(2)(B) and (C) of EPCRA.

V. Rulemaking Record

The record supporting this rule is contained in the docket number OPPTS–400065A. All documents, including an index of the docket, are available in the Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The NCIC is located at EPA Headquarters, Rm. G102, 401 M St., SW., Washington, DC 20460.

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the E.O. (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.

EPA's economic analysis estimates between 344 and 1,102 reports entailing annual costs to EPA and industry between $985,216 and $3,168,900 as a result of the addition of the 11 HCFCs to EPCRA section 313 list of toxic chemicals.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. Although not considered "significant," this rule was sent to OMB for informational purposes.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

40 CFR part 372 exempts certain small businesses from reporting; specifically, those facilities with fewer than 10 full-time employees. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. Additionally, facilities which manufacture or process less than 25,000 pounds or otherwise use less than 10,000 pounds of these chemicals annually are not required to report for these chemicals. Therefore, EPA concludes that this rule is not likely to significantly impact a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2070–0093.

The public reporting burden for this collection of information is estimated to average 47 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: November 29, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 is revised to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. In § 372.65 by adding chemicals to paragraph (a) alphabetically and to paragraph (b) in CAS No. order to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical Name	CAS No.	Effective Date
* * * * *	*	*
1-Chloro-1,1-difluoroethane (HCFC-142b)	75-68-3	1/1/94
* * * * *	*	*
Chlorodifluoromethane (HCFC-22)	75-45-6	1/1/94
* * * * *	*	*
Chlorotetrafluoroethane	63938-10-3	1/1/94
1-Chloro-1,1,2,2-tetrafluoroethane (HCFC-124a)	354-25-6	1/1/94
2-Chloro-1,1,1,2-tetrafluoroethane (HCFC-124)	2837-89-0	1/1/94
* * * * *	*	*
1,1-Dichloro-1-fluoroethane (HCFC-141b)	1717-00-6	1/1/94
* * * * *	*	*
Dichlorotrifluoroethane	34077-87-7	1/1/94
Dichloro-1,1,2-trifluoroethane	90454-18-5	1/1/94
1,1-Dichloro-1,2,2-trifluoroethane (HCFC-123b)	812-04-4	1/1/94
1,2-Dichloro-1,1,2-trifluoroethane (HCFC-123a)	354-23-4	1/1/94
2,2-Dichloro-1,1,1-trifluoroethane (HCFC-123)	306-83-2	1/1/94
* * * * *	*	*

(b) * * *

CAS No.	Chemical Name	Effective Date
* * * * * * *		
75-45-6	Chlorodifluoromethane (HCFC-22)	1/1/94
* * * * * * *		
75-68-3	1-Chloro-1,1-difluoroethane (HCFC-142b)	1/1/94
* * * * * * *		
306-83-2	2,2-Dichloro-1,1,1-trifluoroethane (HCFC-123)	1/1/94
* * * * * * *		
354-23-4	1,2-Dichloro-1,1,2-trifluoroethane (HCFC-123a)	1/1/94
354-25-6	1-Chloro-1,1,2,2-tetrafluoroethane (HCFC-124a)	1/1/94
* * * * * * *		
812-04-4	1,1-Dichloro-1,2,2-trifluoroethane (HCFC-123b)	1/1/94
* * * * * * *		
1717-00-6	1,1-Dichloro-1-fluoroethane (HCFC-141b)	1/1/94
* * * * * * *		
2837-89-0	2-Chloro-1,1,1,2-tetrafluoroethane (HCFC-124)	1/1/94
* * * * * * *		
34077-87-7	Dichlorotrifluoroethane	1/1/94
63938-10-3	Chlorotetrafluoroethane	1/1/94
90454-18-5	Dichloro-1,1,2-trifluoroethane	1/1/94
* * * * * * *		

[FR Doc. 93-29517 Filed 11-29-93; 1:29 pm]
BILLING CODE 6560-50-F

40 CFR Parts 372 and 721

[OPPTS-400069C; FRL-4738-8]

Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding 21 chemicals and 2 chemical categories to the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). All of these chemicals and chemical categories appear on the Resource Conservation and Recovery Act (RCRA) list of hazardous wastes at 40 CFR 261.33(f). The addition of these chemicals and chemical categories to the EPCRA section 313 list of toxic chemicals is based on their acute human health effects, carcinogenicity or other chronic human health effects, or their environmental effects, and on evidence that each is manufactured or imported in quantities of at least 10,000 pounds per year by at least one facility. EPA has found that the chemicals meet the criteria for addition to the list of toxic substances as established in EPCRA section 313(d)(2). EPCRA section 313 reporting for the newly listed chemicals

and chemical categories will be required beginning with activities during the 1994 calendar year. As such, the first reports for the added chemicals and chemical categories must be submitted to EPA and States by July 1, 1995. EPA is also promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 18 chemical substances that were proposed for addition to the EPCRA section 313 list but that are not being added today because no evidence was found that they are manufactured or imported in quantities of at least 10,000 pounds at any one facility. The SNURs will require persons to submit a significant new use notice to EPA at least 90 days before manufacturing, importing, or processing any of the 18 substances (listed herein) in amounts of 10,000 pounds or greater, per year, per facility, for any use.

DATES: The amendments to part 372 (the EPCRA section 313 rule) is effective January 1, 1994. In accordance with 40 CFR 23.5, the SNURs shall be promulgated for purposes of judicial review at 1 p.m. eastern time on December 15, 1993. The amendments to part 721 (the SNURs) become effective on January 14, 1994.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 7408, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This rule is issued under section 313(d) and (e) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023 et seq., "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106 et seq.). Section 313 established an initial list of toxic chemicals that was composed of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479) to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Description of Petition

On March 4, 1992, EPA received a petition from Governor Mario M. Cuomo of New York and the Natural Resources Defense Council to add 80 chemicals and 2 chemical categories to the list of toxic chemicals under section 313 of EPCRA. All of the chemicals and chemical categories appear on the RCRA list of hazardous wastes under 40 CFR 261.33(f).

On September 8, 1992 (57 FR 41020), EPA partially granted the petition by proposing the addition of 68 chemicals and 2 chemical categories. It was the Agency's determination that these chemicals cause or can reasonably be anticipated to cause adverse acute or chronic human health effects or environmental effects as set forth in section 313(d)(2). The remaining 12 chemicals were not proposed for addition because it was EPA's belief that the available data did not indicate that they met the listing criteria of section 313(d)(2).

The proposed rule also included an alternative proposal to add only that subset of the 68 chemicals and 2 chemical categories that met the toxicity criteria for listing and also had evidence of production greater than a certain manufacturing threshold. As described in the proposal, the selection of the manufacturing threshold would be guided by the section 313(f) reporting thresholds, such that the addition of those chemicals produced in quantities less than the selected threshold would not be expected to result in the submission of EPCRA section 313 Form R reports to EPA and States. In conjunction with this alternative proposal, EPA proposed a SNUR under section 5(a)(2) of TSCA to gather information about any planned production greater than 25,000 pounds per facility of any of the petitioned chemicals that met the EPCRA section 313 toxicity criteria for listing and were on the TSCA Section 8(b) Inventory of Chemical Substances, but would not be added under the alternative proposal because they would not be expected to exceed the manufacturing volume threshold.

III. Summary of Final Rule

In this action, EPA is adding 21 chemicals and 2 chemical categories to the EPCRA section 313 list. EPA finds that each of these chemicals and chemical categories meets one or more of the toxicity criteria for listing found in EPCRA section 313(d)(2). Additionally, evidence exists that each of these chemicals can reasonably be anticipated to be manufactured or imported in quantities of at least 10,000 pounds (the EPCRA section 313 otherwise use reporting threshold) by at least one facility. Therefore, the Agency believes that the listing of these chemicals can reasonably be anticipated to generate EPCRA section 313 reports and that adding these chemicals to the list is appropriate.

The proposed rule contained summary information on EPA's review of these chemicals, including the toxicity evaluation. This background information will not be repeated here in the final rule. Based on an evaluation of the public comments received and a reanalysis of the available data cited in the proposed rule, EPA has determined that each of these 21 chemicals and 2 chemical categories meets one or more of the EPCRA section 313 listing criteria. Response to comments on specific chemicals appears in Unit III.G. of this preamble.

The following chemicals are found to meet the statutory criteria of section 313(d)(2)(A) for acute toxicity: bis(2-chloroethoxy)methane; formic acid; and methyl chlorocarbonate. The following chemicals and chemical categories are found to meet the statutory criteria of section 313(d)(2)(B) for cancer or other chronic human toxicity: acetophenone; amitrole; 1,4-dichloro-2-butene; dihydrosafrole; ethylenebisdithiocarbamic acid, salts and esters; ethylidene dichloride; formic acid; hexachlorophene; hydrogen sulfide; malononitrile; methacrylonitrile; methyl mercaptan; 2-methylpyridine; 5-nitro-o-toluidine; paraldehyde; pentachloroethane; pronamide; 1,1,1,2-tetrachloroethane; thiram; trypan blue; and warfarin and salts. The following chemicals are also found to meet the statutory criteria of section 313(d)(2)(C) for environmental toxicity: hexachlorophene; hydrogen sulfide; and thiram.

Upon reevaluation of the toxicity data, EPA has determined that two chemicals that were proposed for listing based on "may be sufficient" evidence of toxicity and evidence of production above the manufacturing level threshold

do not have sufficient evidence of toxicity to meet the statutory criteria of EPCRA section 313(d)(2) and thus are not listed in this final rule. These chemicals are p-chloro-m-cresol and p-toluidine. p-Chloro-m-cresol was rated toxic to man with a probable lethal dose of 50 to 500 milligrams per kilogram (mg/kg); however, because pertinent information, such as mode of exposure, was lacking, the significance of this study could not be determined. The animal LD_{50} (400 mg/kg) studies via other routes of exposure also demonstrated only moderate lethality concerns for this chemical. Because the toxicity data are limited, and the available data indicate that the chemical induces toxicity at relatively high dose levels, the Agency believes that the section 313(d)(2) listing criteria are not met. For p-toluidine, there is only limited evidence of carcinogenicity; increased incidence of hepatoma was seen in the male mice and in high dose female mice only when compared with pooled controls. p-Toluidine was not carcinogenic in male rats and is not mutagenic in a number of genotoxicity test systems. Therefore, the Agency believes that there is insufficient evidence for listing p-toluidine pursuant to section 313(d)(2).

For one other chemical, crotonaldehyde, that was proposed for listing based on "may be sufficient" evidence of environmental toxicity and evidence of production above the manufacturing level threshold, the Agency finds that the evidence of environmental toxicity is insufficient for listing pursuant to EPCRA section 313(d)(2)(C). However, upon reevaluation of the human health data, the Agency believes that there exists a concern for carcinogenicity for this chemical. Therefore, this chemical is not being added to the EPCRA section 313 list in this action, but will be proposed for listing pursuant to EPCRA section 313(d)(2)(B) in the Agency-initiated expansion rule to follow soon.

The Agency proposed to add nine polycyclic organic compounds to the EPCRA section 313 list, but is not finalizing the addition of any of these compounds in today's action. Eight of these compounds have been referred to the Agency's chemical list expansion project for inclusion in a category of specific polycyclic aromatic compounds, because they are similar in structure, origin, and type of adverse effect induced to the other constituents of this possible category. The remaining polycyclic organic compound, fluoranthene, was not referred to the possible category under the expansion project because it differs from the other constituents in type of adverse effect induced. However, it is not being added to the EPCRA section 313 list today because its production volume does not meet or exceed the 10,000 pound per facility threshold.

In response to a comment, the Agency has reevaluated one chemical, methyl ethyl ketone peroxide, that was found to be insufficient for listing in the initial review and therefore was not proposed for addition to the EPCRA section 313 list. As a result of this reevaluation, the Agency has identified a possible concern for corrosivity for this chemical and has referred it for consideration under the Agency's chemical list expansion effort.

In this action, EPA is also promulgating SNURs under section 5(a)(2) of TSCA for 18 chemical substances that were proposed for addition to the EPCRA section 313 list but that are not being added today because no evidence was found that they are manufactured or imported in quantities of at least 10,000 pounds at any one facility. The SNURs will require persons to submit a significant new use notice to EPA at least 90 days before manufacturing, importing, or processing any of the 18 substances in amounts of 10,000 pounds or greater, per year, per facility, for any use. The 18 substances are listed in Unit V.D. of this preamble.

IV. Summary of Public Comment

The public comment period for the proposed rule ended November 9, 1992. Sixty-five comments were received, including 34 from industry, 21 from environmental groups, and the remainder from other public interest groups, private citizens, labor groups, and government agencies and associations. In the **Federal Register** of September 10, 1993 (57 FR 47709), EPA published a notice of availability to allow the public an opportunity to comment on certain additional materials that were added to the docket after the close of the public comment period for the proposed rule. The public comment period for the notice of availability ended September 27, 1993. One comment was received during the public comment period. One additional letter was received requesting an extension of the public comment period on the notice of availability and providing brief comments. This letter will also be treated as a public comment on the notice of availability.

EPA received comments in the following major areas: petition response policy; use of a manufacturing level threshold in listing decisions; use of a production tracking mechanism; listing of categories; use of predictive techniques; general technical comments, and chemical-specific comments.

A. Petition Response Policy

Five industry commenters contended that this petition should have been rejected outright because the petitioners did not provide adequate information for this petition to be evaluated and did not follow the guidelines in EPA's statement of petition policy and guidance (52 FR 3479, February 4, 1987). Two of these commenters argued that acceptance of this petition creates a double standard between information required for listing and delisting petitions and establishes a "dangerous" precedent by EPA's assuming the burden of critically evaluating the petitioned chemicals. One of these commenters contended that, because the petitioners cited only chronic human toxicity as the basis for concern, EPA should have evaluated these chemicals solely for chronic human toxicity, not for all effects.

The Agency does not believe that this petition should have been rejected outright. The petitioners argued that, because the Agency had already listed these chemicals on RCRA using criteria similar to the section 313 toxicity criteria, these chemicals could reasonably be anticipated to cause the toxic effects cited in section 313(d)(2). While the Agency clearly would prefer that petitioners provide specific information relevant to all effects, the Agency believes that the information and rationale provided by the petitioners in this case were adequate for the purposes of initiating an Agency review of this petition. The Agency has, on occasion, made similar decisions with respect to evaluation of delisting petitions containing little specific information, such as the petition to delete decabromodiphenyl oxide (54 FR 46424, November 3, 1989) from section 313.

Three commenters contended that it was inappropriate to base an EPCRA section 313 listing decision solely on the RCRA status of the chemicals, because the two statutes have different purposes and different listing criteria. The Agency agrees. All chemicals included in the petition were evaluated for addition to the EPCRA section 313 list of toxic chemicals by applying the listing criteria established under section 313(d)(2). EPA's decision to add these chemicals to EPCRA section 313 was not based on their RCRA status. Furthermore, as stated in the proposal (57 FR 41021, September 8, 1992), the actions taken in this proceeding have no effect on any substance's status under RCRA or any other statute.

Seven commenters contended that it was inappropriate for EPA to use the *Draft Hazard Assessment Guidelines for Listing Chemicals on the Toxic Release Inventory* (Ref. 1) in the technical review of the petition. These commenters believed that EPA should finalize these draft guidelines prior to using them to make section 313 listing decisions, particularly since the guidelines have been presented for public comment, but this comment has not yet been incorporated. In response, EPA believes that it is appropriate to use these draft guidelines in listing and delisting decisions, because they are merely an embodiment of internal EPA practices that have been used in the review of petitions to add and delete chemicals from EPCRA section 313 since the inception of the program. These guidelines do not constitute a set of rules for additions and deletions, but merely an explanation of the process and general standards for evaluating chemicals against the section 313 listing criteria. The draft guidelines notwithstanding, EPA has evaluated every chemical subject to this rulemaking against the section 313 statutory criteria.

One commenter suggested that this petition should be considered in the context of the overall EPCRA section 313 chemical list expansion effort rather than in isolation. EPA has coordinated its response to this petition with its own, internally-initiated effort to identify toxic chemicals for addition to the EPCRA section 313 list. As a result of this effort, the Agency expects to propose a chemical list expansion rule in late 1993 or early 1994. However, the chemicals that are the subject of today's action were included in a governor's petition, and the Agency has now completed its review of the petition and the public comment. The Agency does not see any potential benefit to be gained by delaying today's action to coincide with the Agency-initiated expansion rule.

Two commenters recommended that EPA prioritize its listing decisions, using the Agency's limited resources to list first those chemicals that pose the greatest risk. However, the statutory criteria for listing chemicals under EPCRA section 313 focus on hazard, not risk. Only section 313(d)(2)(A) requires a risk-related factor, the potential for exposure in the form of chemical concentrations beyond the fenceline. The Agency has also used its discretion to consider exposure potential when evaluating chemicals that show moderate aquatic toxicity under section 313(d)(2)(C). Because of the focus of the statutory criteria, EPA believes that prioritization of chemicals for listing under section 313 should be based largely on hazard, not on risk. In this case, EPA received a petition and is required by section 313(e) to act in response to the petition.

Three commenters suggested that, prior to adding chemicals, EPA should subject them to a "policy screen" to determine, for example, if EPCRA is the most appropriate mechanism for collecting data about the chemicals, whether listing the chemical best serves the public right-to-know purposes of EPCRA, or whether listing will promote good environmental practices with respect to the chemical. One commenter contended that EPA needs to evaluate and articulate the usefulness of collecting this data for these chemicals. The Agency believes that EPCRA section 313 is an appropriate mechanism for collecting data on these chemicals, and that listing these chemicals will serve the purposes of EPCRA by providing the public with information about releases of these chemicals from facilities. EPA believes that EPCRA section 313 data have been extremely useful to the public, industry, and government, particularly in promoting good environmental practices with respect to toxic chemicals, and the Agency fully expects this to be true for these chemicals as well.

B. Manufacturing Volume Threshold

Twelve commenters, primarily from industry, expressed support for the use of a manufacturing volume threshold in EPCRA section 313 listing decisions. These commenters agreed with the Agency's position that the public's right-to-know is not served by listing chemicals for which few, if any, reports would be submitted. In contrast, 31 commenters, primarily environmental and public interest groups, labor groups, and private citizens, supported the proposal to add all 68 chemicals and 2 categories that were found to meet the toxicity criteria and opposed the proposal to employ a manufacturing volume threshold. These commenters stated that it is inappropriate to use production volume data to make listing determinations that should be based solely on toxicity.

Two commenters maintained that use of the manufacturing volume threshold is appropriate, because EPA has the option but is not required to list chemicals that meet the statutory criteria for listing. Two other commenters contended that the law and legislative history make it clear that, when responding to a governor's petition, EPA has a mandatory duty to add all chemicals that meet the toxicity criteria in section 313(d)(2). These latter commenters contend that the discretion cited by EPA in the proposal applies to Agency-initiated actions only. Four commenters state that the use of a manufacturing level threshold as a basis for listing is inappropriate, because the statute expressly lists the types of data to be considered in chemical listing decisions, and manufacturing data are not included in that list. Five commenters contended that choosing not to list certain toxic chemicals because they are not manufactured at levels that exceed a certain volume threshold is inconsistent with or contravenes the intent of the statute.

EPA reaffirms its belief, stated in the proposal, that "the use of a manufacturing volume threshold in responding to petitions under section 313(e) is appropriate and within the authority granted by EPCRA" (57 FR 41035, September 8, 1992). The detailed rationale for this belief is included in the proposal and is not reiterated here. However, in summary, the Agency believes that the discretion granted under section 313(d)(2) in the words "a chemical may be added" applies equally to Agency-initiated actions and to petition responses. Section 313(e), which governs the petition process, explicitly directs the Agency to, if appropriate, initiate a rulemaking "in accordance with subsection (d)(2)." Further, the Agency believes that the use of this threshold is not only a permissible and reasonable interpretation of the statute, but also "consistent with the section 313 list's purpose of generation of publicly available release data on listed chemicals and therefore a valid exercise of the Agency's discretion" (57 FR 41035). Finally, while the statute specifies generally accepted scientific principles, laboratory tests, and other studies as the permissible bases for making a toxicity determination under section 313(d)(2), EPCRA does not preclude the Agency from considering other information, such as production volume, when exercising its discretion when responding to a petition to list or not list a chemical that may meet the toxicity criteria.

Three commenters contended that EPA should not use a manufacturing volume threshold because available production data may be inaccurate or incomplete and therefore an inadequate basis for a decision. EPA acknowledged in the proposal that "information used to determine if a chemical is manufactured, imported or processed in quantities greater than an established manufacturing volume threshold...is limited" (57 FR 41038, September 2,

1992). In the proposal, EPA presented the production volume information it had obtained and specifically sought information from the commenters on production volumes. However, no additional information about production of any of these chemicals above either a 10,000 pound or a 25,000 pound threshold was provided by any commenter.

The Agency has conducted an extensive search of a number of different data sources to ensure that the best possible production information was used for the final decisions. While these data may be incomplete or inaccurate for some chemicals, EPA believes that, as the best available information, it constitutes a reasonable basis for these decisions.

EPA conducted, subsequent to the proposal, a search of a variety of data sources to attempt to identify production that was not identified at the proposal stage. The revised economic analysis (Ref. 2) provides information about the additional data sources that were examined and the results of the search for additional production data. One chemical (hexachlorophene) and one chemical category (warfarin and salts) were identified with manufacturing or import volumes in excess of the 10,000 pound threshold. (One chemical, trypan blue, had already been identified at the proposal stage as having a manufacturing or import volume above 10,000 pounds.) One additional chemical, paraldehyde, was identified with a known import volume of 5,000 pounds and is also known to form from acetaldehyde, a listed section 313 chemical, on standing. It is EPA's belief that this evidence of import and coincidental manufacture indicate that production of paraldehyde could reasonably be anticipated to exceed the 10,000 pound threshold.

Three commenters objected to the use of a manufacturing volume threshold because any confidential business information (CBI) used by EPA as a justification for a decision could not be released to the public or listed as a justification for rulemaking in the **Federal Register**. Therefore, the public would not be able to check or comment on EPA's judgments made using these data. In response, EPA has several options for using CBI data as a basis for a rulemaking. EPA can request a waiver from facilities to release certain information to the public. Alternatively, EPA can aggregate or otherwise mask facility-specific information in ways that provide the necessary information to the public without divulging CBI. Therefore, EPA does not believe that the possibility that CBI data will undermine the discretionary use of production volume in an EPCRA listing decision provides a sufficient reason to abandon the manufacturing volume threshold approach.

Ten public interest group commenters stated that adding chemicals for which no reports would be expected imposes no serious burden on the regulated community. Therefore the decision to refrain from adding chemicals that would not be expected to yield reports will provide no or only negligible burden relief to facilities. Two commenters argued that the fact that the regulated community has never petitioned EPA to remove from EPCRA section 313 the chemicals for which no reports have ever been received, indicates that the regulated community is not concerned about the negligible burden of having these chemicals on the list. Industry commenters contended that listing chemicals for which no reports would be expected imposes a burden on industry because subject facilities would still be required to determine whether they exceed thresholds for these chemicals. They also contend that facilities may be subject to an indirect burden from other regulatory requirements triggered by an EPCRA section 313 listing.

EPA believes that listing chemicals for which no reports would be expected would impose some additional burden on industry without producing any notable benefit. Some additional burden would be involved in examining a longer list of chemicals to determine which, if any, are manufactured, processed, or used at a subject facility. Some additional burden may also be imposed if the facility manufactures, processes, or uses a small quantity of any of these chemicals and therefore must perform threshold calculations to determine reporting obligations. EPA acknowledges that, for most facilities, the additional burden is likely to be minor. However, the Agency believes that even this minor additional burden would not be justified if there were clearly no reasonable basis for the Agency to expect submission of reports for these chemicals. EPA also believes that the absence of petitions to remove certain chemicals from the list does not necessarily indicate that the regulated community is not concerned with the burden associated with the presence on the list of those chemicals or other chemicals for which no reporting would be expected. Indeed, the general support for the use of a manufacturing volume threshold expressed by the regulated community in the public comment period suggests the contrary.

Eighteen commenters contended that listing these chemicals individually later because of production increases would be a cumbersome, costly, and inefficient process that would waste scarce EPA resources. EPA does not expect future individual listing to be particularly cumbersome, inefficient, or time-consuming. Hazard assessments have already been performed for these chemicals. Therefore, it would be relatively simple to add these chemicals in the future based on evidence of production or use volumes likely to generate reports. Thirteen commenters contended that such future listing may result in the loss of one, two, or more years' data between the time that production increased and the time that the reporting requirement would take effect. For the 18 chemicals subject to the significant new use rules being promulgated today, EPA does not expect any loss of data. The significant new use rules, which are also being promulgated in final form today, will require facilities to submit notification to the Agency of their intent to produce any of the subject chemicals in quantities of 10,000 pounds or more. Upon receipt of this notice, the Agency may require under TSCA authorities the submission of additional data about this production, including the data that would be required under EPCRA section 313. For chemicals that are not subject to the significant new use rules, EPA acknowledges that there may be a time lag for receipt of Form R reports under this approach. However, the number of lost reports would not be expected to be large unless one or more of these chemicals that are currently believed to be out of production entirely or produced in only very low quantities underwent a sudden and dramatic production increase. The production data the Agency has examined gives the Agency no reason to expect such sudden production increases for any of these chemicals. For example, many of these chemicals are canceled pesticides or drugs that are no longer approved for use in this country and do not appear to be produced for export. For chemicals such as these, it is reasonable to expect future production to remain constant or to decline.

Two commenters argued that, if a manufacturing level threshold is to be employed, it should be set at 10,000 pounds, rather than 25,000 pounds, since 10,000 pounds represents the lowest activity threshold for reporting under section 313. The Agency reaffirms that the purpose of a manufacturing volume threshold would be to ensure that chemicals are only added to EPCRA

section 313 if it is reasonable to expect submission of reports for those chemicals. In general, the Agency agrees with the commenters that the manufacturing volume threshold used in making decisions to add chemicals to the section 313 list should correspond to the lowest section 313 activity threshold for reporting, which is the 10,000 pound threshold for otherwise using a chemical. Accordingly, a manufacturing volume threshold of 10,000 pounds was adopted for this action. However, in certain cases, readily available and reliable production and use information may lead the Agency to conclude that no reports would be submitted for a chemical whose known production exceeds 10,000 pounds but is less than 25,000 pounds. In such cases, the Agency may use its discretion not to list that chemical.

Two commenters contended that failing to list toxic chemicals that currently are not produced or are produced in low quantities may cause businesses to switch their manufacturing, processing, or use from listed section 313 chemicals to chemicals that are not on the section 313 list. While such substitution may certainly occur, EPA does not believe it is likely for the majority of these chemicals, since many of them are canceled, restricted, or are research or medical chemicals used in small quantities for very specific purposes. For chemicals that are subject to the significant new use rules being promulgated today, EPA would receive notification of a facility's intent to manufacture any of these chemicals in quantities of at least 10,000 pounds. If evidence of production at or above the 10,000 pound threshold becomes available for any chemical, whether through notice under the significant new use rules or through other means, the Agency will examine that chemical for potential addition to the EPCRA section 313 list.

One commenter stated that some chemicals that are not produced in large quantities nationally are of particular interest in the commenter's local area. However, the commenter did not identify particular chemicals or provide any production information. Under EPA's approach, the manufacturing volume threshold applies on a per facility basis. Therefore, if a chemical is known to be produced at a facility in the commenter's area in a quantity that would be sufficient to generate a section 313 Form R report, that chemical would be listed under this action.

C. Production Tracking Mechanism

EPA recognized in the proposal that there may be future production of certain of these chemicals in excess of the manufacturing volume threshold. Therefore, the Agency stated its intention to promulgate a significant new use rule (SNUR) under TSCA section 5(a)(2) to identify such future production. The SNUR was proposed for 21 chemical substances and 1 chemical category that were on the TSCA section 8(b) Inventory of Chemical Substances and were believed to meet the EPCRA section 313(d)(2) toxicity criteria, but were not known to be in production at or above 25,000 pounds. The Agency requested comment on the suitability of the SNUR as a production tracking mechanism, as well as on the use of other regulatory mechanisms for obtaining production volume information.

Five commenters objected to the use of the SNUR because they believe it imposes excessively burdensome requirements and collects more information than is needed for the stated purpose. Four commenters stated that the burden reduction of not listing the chemicals would be outweighed by the additional burden of the SNUR, and therefore the Agency should simply make a listing decision rather than promulgate the SNUR. One commenter contended that using a SNUR to track future production for EPCRA purposes is not an appropriate use of a SNUR, which is supposed to be used for tracking new uses of a chemical substance for TSCA purposes. Four commenters contended that the Agency should consider a less burdensome tracking mechanism, such as a minimal notification requirement under TSCA section 8(a). Several commenters objected to the use of a SNUR because the SNUR could not track production of chemicals not covered by TSCA, such as drugs, drug intermediates, and pesticides. Two commenters stated that compliance with the SNUR requirements might not be as high as compliance with EPCRA section 313, since EPCRA section 313 has high visibility and can be enforced with citizen suits.

The Agency has closely considered these comments and has determined that a SNUR remains the most appropriate mechanism for monitoring these chemical substances and taking follow-up action, if appropriate. Therefore, the Agency is promulgating SNURs for 18 of the chemical substances for which a SNUR was proposed. Three chemicals (hexachlorophene, paraldehyde, and trypan blue) and one chemical category (warfarin and salts) that were included in the proposed SNUR are not included in today's final SNURs because they are being added to the EPCRA section 313 list today.

EPA disagrees that using a SNUR to track future production is an inappropriate use of TSCA section 5(a)(2). Indeed, as indicated in the TSCA Conference Report, Congress specifically contemplated such a use in drafting TSCA. "Thus a significant increase in the projected volume of manufacture or processing for a substance, a significant change in the type or form of human or environmental exposure, or a significant increase in the magnitude or duration of human or environmental exposure could be the basis for determining that a use is a significant new use." (H.R. Rep. 1679, 94th Cong., 2d Sess. 66 (1976)). In addition, there is no indication in TSCA or the legislative history that SNURs are to be used only for TSCA purposes. In fact, it was broadly acknowledged by Congress that TSCA is to be a "gap filler" in relation to other laws administered by EPA.

EPA disagrees that submission of a significant new use notice (SNUN) is an excessively burdensome requirement. The chemical substances for which EPA is issuing SNURs are known to, or can reasonably be anticipated to cause an adverse effect on humans or the environment. These chemical substances are currently produced below the section 313 reporting threshold for otherwise using a chemical substance of 10,000 pounds at any facility. Production volume increases above this level, and subsequent changes in exposures to these chemical substances, may present an unreasonable risk of injury to human health or the environment. The burden estimated for submission of SNUNs to the Agency is not unreasonable, since receipt of the notice will allow EPA to evaluate the new exposure scenarios, consider additional data submitted with the notice, and take action under TSCA section 5(e) or 5(f), if appropriate, to develop additional data or prevent an unreasonable risk. Following receipt of a SNUN, and subsequent evaluation of available data on the chemical substance, EPA may also determine to list the chemical under EPCRA section 313.

EPA's determination to issue SNURs for these chemical substances rather than list them under EPCRA section 313 is not based upon the relative burden of reporting for EPCRA section 313 versus reporting under a SNUR, but rather the appropriateness of each statutory

section for managing toxic chemical problems. The primary purpose of a SNUR is to ensure that the Agency is notified prior to any significant or new exposures to new or existing chemical substances. For example, a SNUR may be promulgated to obtain a notice prior to resumption of production of a chemical substance that has been phased out of commerce because of health concerns, or changes in worker exposure or pollution control measures for hazardous chemical substances which could effect exposure levels. Today's action is consistent with EPA's past use of TSCA section 5(a)(2). As noted in the preamble to the proposed rule, EPA believes that it is important to focus on those toxic chemicals that will yield data for the public. Because these chemicals are produced below the reporting threshold, adding the chemicals to the EPCRA section 313 list would not yield data for the public.

EPA considered the use of a TSCA section 8(a) reporting rule as an alternative to a SNUR. A section 8(a) rule would provide a means to acquire production volume and other exposure related data on these chemicals. However, section 8(a) is limited when compared to section 5(a)(2) in that it does not provide a mechanism for follow-up collection or generation of additional data, or for mitigation of possible unreasonable risks, except by subsequent rulemaking. Because these chemical substances are known to be hazardous, EPA considers the follow-up authorities contained in section 5 of TSCA to be appropriate. In addition, small businesses are exempt from reporting under TSCA section 8(a), and EPA believes it could miss increases in production by small businesses if it used section 8(a) rather than SNURs.

EPA disagrees with the commenters who argued that SNURs should not be used as a production tracking mechanism in this situation because they cannot be used for chemicals not covered by TSCA, such as drugs and pesticides. The fact that SNURs are inappropriate tracking mechanisms for certain of these chemicals does not argue against their use for other chemicals that are covered by TSCA. EPA has not identified any more suitable production tracking mechanism, and therefore believes that it is preferable to use the SNURs rather than another alternative or no tracking mechanism at all. It should be noted that pesticides and drugs that have other, non-pesticidal or non-drug uses may be included on the TSCA Inventory (e.g., DDT) and can be appropriate subjects of SNURs.

EPA agrees that EPCRA section 313 has high visibility, and can be enforced by citizen suits. However, under TSCA, penalties for violation can reach $25,000 per day per violation. Because SNUR violations are considered among the most egregious of possible TSCA violations, companies have a strong motivation to comply. In addition, EPA diligently monitors compliance with section 5(a)(2). Finally, TSCA section 20 also has authority for citizen suits to enforce TSCA rules. EPA, therefore, does not believe that there is any evidence or compelling reason to believe that compliance with EPCRA section 313 would be higher than for TSCA section 5(a)(2).

Unit V. of this preamble contains additional discussion on the SNURs being finalized today.

D. Addition of Categories

Two chemical categories (ethylenebisdithiocarbamic acid, salts and esters; warfarin and salts) were proposed for listing. Four commenters contended that EPCRA does not provide for the addition of a chemical category without individually evaluating and justifying each member of that category. The Agency believes that the statutory authority to add "a chemical" to the list may be reasonably interpreted to include the authority to add groups or categories of chemicals to the list, particularly in light of the fact that the original list adopted by Congress in section 313(c) of EPCRA included 20 chemical categories, mostly metal compounds, but also including categories of organic chemicals such as chlorophenols. The Agency believes it may satisfy the statutory criteria for adding a chemical category to the list by identifying the toxic effect of concern for at least one member of the category, and then showing why that effect may reasonably be expected to be caused by all other members of that category. The justification for the listing of the two categories in this action is given below in the chemical-specific portion of the response to comments section.

Four commenters objected to the listing of chemical categories because categories are difficult for EPA to administer and/or for the public and industry to understand. They also contend that industry compliance with reporting and supplier notification requirements is more difficult for categories because facilities are not provided with discrete chemical names and Chemical Abstract Service (CAS) registry numbers. Because the two categories being added to the section 313 list today each consist of chemicals that are similar chemically and in potential effect, EPA believes that these categories will not be difficult for the public or industry to understand or for the Agency to administer. The Agency will work with the public and the regulated community to develop, as appropriate, any interpretations and guidance the Agency determines are necessary to facilitate accurate reporting for these categories.

Several commenters stated that categories should only be used to group compounds that are similar chemically and in potential effects. As stated above, it is the Agency's belief that the two categories added to section 313 in this action are each composed of chemicals that are similar chemically and in potential effects.

The Agency proposed to add 9 polycyclic organic compounds to the section 313 list and requested comment on whether these chemicals should be listed as a category rather than individually. The Agency is not adding any of these polycyclic organic compounds to the EPCRA section 313 list in today's action. Eight of these compounds have been referred for consideration under the Agency-initiated chemical list expansion effort. In that expansion effort, the Agency is considering the addition of a delineated category of polycyclic aromatic compounds (PACs) to the EPCRA section 313 list. The eight polycyclic organic compounds are being referred for possible inclusion in that category because they are similar in structure, origin, and the type of adverse effect induced to the other constituents of the possible PAC category. Specific comments already received on the grouping of these compounds into a category will not be addressed in today's action, but will be referred for consideration in the final rule for the chemical list expansion effort.

One polycyclic organic compound (fluoranthene) that was included in the proposal is not being referred for consideration in the PAC category under the chemical list expansion effort because it is not similar to the other constituents in type of adverse effect induced. However, that chemical is not being added to the EPCRA section 313 list in this rule because it does not meet the manufacturing threshold.

E. Use of Predictive Techniques

The hazard assessments for several of the chemicals in the proposal included estimated aquatic toxicity values generated from quantitative structure activity relationship equations (QSARs) and other predictive techniques. Several commenters objected to the use of values generated by these predictive

techniques as evidence that a chemical meets the toxicity criteria of section 313. Some commenters stated that there is no basis in the statute or the legislative history for their use. Other commenters believed that such predictive techniques could be used, but not as a sufficient basis by themselves for listing a chemical on section 313. Some commenters questioned the technical accuracy of QSARs, since their predictive power varies, and comparison of QSAR data with actual aquatic toxicity results can show a significant margin of error in some cases. One commenter requested that the QSAR reference manual or other supporting documentation be added to the docket. This reference manual was added to the docket and its availability was announced in a **Federal Register** notice of availability published September 10, 1993 (58 FR 47709).

EPA believes that, where no or insufficient actual aquatic toxicity data exist upon which to base a decision, toxicity estimates generated by QSARs and other predictive techniques may constitute sufficient evidence that a chemical meets the section 313 listing criteria. EPA's authority to use such predictive techniques derives from section 313(d)(2) of the statute, which states that EPA shall base its listing determinations on, *inter alia*, "generally accepted scientific principles." EPA believes that the aquatic QSAR equations that are in widespread use and that show a high correlation between estimated and measured aquatic toxicity values can be considered to be generally accepted scientific principles (Ref. 3) and can form the basis of a listing determination. However, none of EPA's listing decisions for this final rule rely solely on aquatic toxicity values generated by QSARs or other predictive techniques. Several chemicals for which QSAR estimates were included in the proposal are being added to the list based upon other, sufficient evidence of toxicity. The remainder of the chemicals for which QSAR estimates were included in the proposal are not being added to the list in this action because their production does not exceed the manufacturing level threshold.

F. General Technical Comments

Five commenters contended that chemicals whose evidence of toxicity places them in the "may be sufficient" category of the *Draft Hazard Assessment Guidelines* (Ref. 1) should not be listed under EPCRA section 313 because they do not reach the level of significance specified in the statute. These commenters contended that the statutory listing criteria are more stringent than those used to develop the proposal. One commenter pointed out that, according to the *Draft Hazard Assessment Guidelines*, the Agency did not intend to automatically list all the "may be sufficient" chemicals; two commenters pointed out that these guidelines call for a two-step approach of initial screening followed by an in-depth hazard analysis, and that it did not appear that this in-depth hazard analysis was performed.

EPA agrees with the commenters that a determination of "sufficient" evidence is required to support the listing of a chemical under section 313. For each of the 14 chemicals that were classified as "may be sufficient" in the alternative proposal and that had evidence of production exceeding the manufacturing threshold, EPA has now conducted a detailed hazard assessment to determine whether there is sufficient evidence to establish that the chemical meets the statutory criteria for addition to the list (Ref. 4). To make this determination, EPA reviewed the readily available toxicity information on the chemicals for the effects cited in the proposed rule, environmental fate data where appropriate, and any public comment received. EPA's determination that a chemical is known to cause or can reasonably be anticipated to cause one of the adverse effects described in section 313(d)(2) is based on the significance of the effects induced by the chemical, the severity of the effects, the dose level causing the effect, and the quality and quantity of the available data. This included a consideration of the type of hazard data (e.g., data in animals versus human) and the confidence in this hazard data base (e.g., the sufficiency of the hazard data). Based on the results of these hazard assessments (Ref. 4), all of the chemicals being added to the EPCRA section 313 list in this action have sufficient evidence that they meet one or more of the statutory listing criteria under EPCRA section 313(d)(2). The basis for the listing decisions is presented in Unit III. of this preamble.

One commenter maintained that intraperitoneal (stomach cavity) injection has minimal relevance for evaluating potential human exposure from industrial situations and should not be used to support an EPCRA section 313 listing decision. The commenter contended that, if considered at all, intraperitoneal injection is a form of exposure that should be considered in establishing a section 313(d)(2)(A) finding of acute effects, not a section 313(d)(2)(B) finding of chronic effects.

EPA disagrees with the commenter. In making section 313 listing decisions, the Agency cannot ignore the possible significance of any existing data, including data from intraperitoneal injection studies. Although it is preferable to have toxicity data from the common routes of human exposure for risk assessment, EPA has taken the conservative approach for hazard identification under EPCRA section 313. This comment related to two chemicals (malononitrile and pentachloroethane) that are being added to the section 313 list today. For these chemicals, any data from intraperitoneal or other injection routes of exposure are supplemented by data from other, noninjection exposure routes. For example, in addition to chronic human and rat injection studies to support the neurotoxicity concerns of malononitrile, acute inhalation studies in rats and mice were also available which demonstrated acute neurotoxicity effects for this chemical (Ref. 4). For pentachloroethane, acute (dog) and chronic (dog and cat) inhalation studies showed numerous neurological effects (Ref. 4). The proposed rule contains information on EPA's review of these chemicals, including the toxicity evaluation. This background information will not be repeated here in the final rule. Based on EPA's reanalysis of the available information in the proposed rule for these two chemicals (Ref. 4), EPA has determined that malononitrile and pentachloroethane have sufficient evidence to meet the statutory listing criteria under EPCRA section 313(d)(2)(B).

One commenter objected to the use of data concerning effects of short duration (transient episodes) to support a finding of chronic neurotoxicity. The commenter contended that there is no correlation between transient acute impact and chronic neurotoxicity that is appropriate to industrial chemicals as a whole. The commenter contended that, if a chemical exhibits transient acute but not chronic effects, it should not be listed based on chronic neurotoxicity, unless additional data on chronic neurologic effects are also used in the determination to list the chemical.

EPA agrees with the commenter that if a chemical exhibits acute neurotoxic effects, it should be listed based on acute effects unless additional data on long-term neurotoxic effects are available (Ref. 4). This comment related to two of the chemicals that are being added to the section 313 list today. For these chemicals, any data from acute studies were previously supplemented by chronic neurotoxicity information. For example, in chronic toxicity studies, 2-methylpyridine produced numerous

neurological effects in rats. For pentachloroethane, numerous neurological effects were demonstrated in dogs and cats in chronic toxicity studies. The proposed rule contains information on EPA's review of these chemicals, including the toxicity evaluation. This background information will not be repeated here in the final rule. Based on comments received and EPA's reanalysis of the available information in the proposed rule for these two chemicals (Ref. 4), EPA has determined that 2-methylpyridine and pentachloroethane have sufficient evidence to meet the statutory listing criteria under EPCRA section 313(d)(2)(B) based on available neurotoxicity data for these chemicals.

One commenter stated its belief that EPA has taken the position that an EPA Group B2 classification as to human carcinogenicity satisfies the section 313(d)(2)(B) statutory criterion that a chemical "can reasonably be anticipated to cause in humans . . . cancer." The commenter notes that none of the cited references, however, contains human carcinogenicity data, and all references are to animal data. In response, EPA reaffirms its belief that Group B2 compounds satisfy the statutory criteria pursuant to EPCRA section 313(d)(2)(B). According to EPA guidelines, chemicals are classified as Group B2 compounds when there is sufficient evidence that the chemical causes cancer in animal studies and therefore is a probable human carcinogen. EPA reaffirms its belief that this evidence is sufficient to satisfy EPCRA section 313(d)(2)(B) findings that a chemical can reasonably be anticipated to cause cancer in humans (Ref. 4).

Three commenters stated that EPA should broaden the factors it considers when making a listing determination to include other factors related to potential exposure and risk, such as physical and chemical properties or persistence and bioaccumulation. EPA routinely considers the fate of the chemicals in the environment in its exposure analyses for chemicals meeting the acute toxicity criterion of EPCRA section 313(d)(2)(A), and has done so for this petition as well (Ref. 5).

Two commenters indicated that EPA should examine other data sources such as the National Response Center (NRC) and State and local agencies to determine frequency and circumstances of past releases, and should consider this data when making a listing decision under section 313. Upon examination of the data sources suggested by the commenters, EPA has concluded that these data bases cannot replace EPA's standard potential dose rate (PDR) analysis (described at 57 FR 22892, May 29, 1992) for chemical releases to air, water, and land on a routine basis. These data bases report accidental releases and, therefore, are not appropriate for use in conducting an analysis of ambient chemical concentrations and doses received by the general population based on routine releases. In addition, these data bases often yield little information on the route or circumstances of exposure (Ref. 5).

Several commenters stated that, for those chemicals that have sufficient evidence of acute toxicity, EPA cannot assume that there are sufficient releases of a chemical to reasonably anticipate that the substance will cause the acute effects beyond site boundaries as a result of continuous or frequent releases, as stipulated in section 313(d)(2)(A). Two commenters believe that, given the limits of available production information, EPA does not need to do exposure assessments to list chemicals. As stated in the proposal, EPA assumed for the purposes of the proposal that "there are sufficient releases for the Agency to reasonably anticipate that the chemical will cause 'significant acute human health effects' beyond the facility site boundaries" (57 FR 41022). This assumption was made for the purposes of the proposal because the time limitations imposed by the statute and limitations in currently available production volume information prevented the Agency from conducting detailed exposure assessments for each of the chemicals proposed for listing pursuant to section 313(d)(2)(A). However, the Agency agrees that, to list a chemical under section 313(d)(2)(A), the Agency must demonstrate why it believes that the chemical can reasonably be anticipated to cause acute effects at concentration levels reasonably likely to be found beyond the facility site boundaries due to continuous or frequently recurring releases.

To that end, the Agency has conducted exposure assessments (Refs. 5, 6, 7, and 8) for all chemicals for which the Agency is listing the chemical based solely on acute effects under section 313(d)(2)(A). These exposure assessments have been added to the docket, and their availability was announced in the **Federal Register** notice of availability published September 10, 1993 (58 FR 47709). Based on EPA's analysis of the available toxicity information for the 13 chemicals in the "may be sufficient" category (Ref. 4), 3 of the chemicals have sufficient evidence to meet the statutory listing criterion for acute toxicity under EPCRA section 313(d)(2)(A). Exposure and risk assessments (Ref. 9) showed a significant acute human health risk from fugitive releases of bis(2-chloroethoxy)methane and formic acid. For methyl chlorocarbonate, exposure and risk assessments (Ref. 9) showed a significant acute human health risk from fugitive and stack releases. Therefore, there is sufficient evidence for listing these chemicals pursuant to section 313(d)(2)(A).

During the public comment period following the publication of the notice of availability, one commenter raised a number of questions about the exposure assessment report (Ref. 5). The commenter contended that the basis for many of the estimated releases and exposures was not clear. The procedures EPA used to estimate the releases to water, land, and air, and releases from incineration, were provided in reference number 7 of the exposure report. The methods used in calculating the releases to the various media indicated how to use those estimated releases in calculating potential dose rates (PDRs) for each use application. PDRs based on generic air releases were estimated using the Point Plume model, reference number 1 in the exposure report, which provides short-term ambient air concentrations from releases from a single source.

The commenter stated that the exposure report (Ref. 5) did not provide an extrapolation from the examples given to nationwide exposures, and did not indicate how many people are expected to be exposed to the listed PDRs. EPCRA does not require an estimation of number of persons exposed to list a chemical under section 313(d)(2)(A) for acute effects. Regarding extrapolation to nationwide data, the hypothetical manufacturing and use release estimates were derived using site-specific information when possible and generic Standard Industrial Classification (SIC) code information, which assumes the plants are located anywhere in the U.S.; therefore, these results should be valid for any location in the country.

The commenter contends that the derivation of the PDRs for ingesting contaminated groundwater from landfill releases was not explained in the exposure report (Ref. 5), and that the assumed consumption of 2 liters per day is questionable at best. The derivation of the landfill PDR calculations was listed as reference number 11 of the exposure report. The drinking water ingestion estimate of 2 liters of water per day is based on EPA guidance; see the *Exposure Factors Handbook* (EPA/600/

8–89/043). This recommendation is based on several studies of drinking water consumption, showing that 2 liters of water per day is a reasonable default value for daily drinking water ingestion.

The same commenter objected to the use of acrylic acid and methyl ethyl ketone as surrogate chemicals to estimate the releases of formic acid in the release analysis (Ref. 8). The Agency agrees that actual monitoring data on formic acid emissions and releases would make a release estimate superior to an assessment based on data assumptions and modelling estimates. However, there do not appear to be any readily available monitoring data for formic acid emissions. The Agency believes that, in the absence of actual monitoring data and the associated modelling necessary to determine the actual releases of formic acid, use of section 313 data for surrogate chemicals is appropriate and reasonable. The following reasons describe the choice of acrylic acid and methyl ethyl ketone as surrogate chemicals for the estimation of releases of formic acid to the environment.

To estimate the possible releases of formic acid, the release analyses used the 1990 section 313 data for methyl ethyl ketone and acrylic acid at the Hoechst Celanese facility in Pampa, Texas, which also manufactures formic acid. Acrylic acid is very similar to formic acid for certain physical properties, such as water solubility and molecular weight. In addition, both acrylic acid and formic acid are organic acids. The release analysis also used such factors as the Agency's emission factors, the number of valves, flanges and tanks, and the type of chemical, such as organic liquid or crude oil. EPA understands that the type of equipment used has direct bearing on the environmental releases; however, detailed information about the actual equipment used was not available. Because the same basic reaction (oxidation of aldehydes) is used to form acrylic acid and formic acid, EPA believes it is reasonable to assume that the process equipment used would be similar for the production of both formic acid and acrylic acid. Therefore, if the through-put amount and the number of process tanks, valves, and flanges is the same for two different chemical processes, and the chemicals belong to the same class and have similar physical-chemical properties, then the releases of the two chemicals are expected to be in the same range.

EPA's release analysis (Ref. 8) took into account the physical property differences of formic acid and acrylic acid, as well as the throughput or production volume differences, and the different media of release. Methyl ethyl ketone (MEK) was selected to adjust the acrylic acid estimates because MEK's vapor pressure is more similar to formic acid's than is acrylic acid's vapor pressure. The Agency believes that the estimated releases for formic acid based on acrylic acid and methyl ethyl ketone are reasonable in light of the lack of actual monitoring data for formic acid.

G. Chemical-Specific Comments

The Agency received comments about a number of the specific chemicals included in the proposal. However, many of the chemicals proposed for addition are not included in this final rule because no evidence could be found that at least one facility manufactured or imported them at a level of at least 10,000 pounds. In those cases, the decision not to list the chemical was based entirely on production volume data, not on toxicity or other technical information. Therefore, the Agency will not respond in this rule to technical comments received on chemicals that did not meet the production volume threshold, other than to say that these comments were not relevant to the Agency's final listing decision.

1. *Hydrogen sulfide.* Several commenters contended that the data supporting the proposal to list hydrogen sulfide are inadequate to show that this chemical causes chronic health effects under section 313(d)(2)(B), and that the chemical should have been evaluated instead under section 313(d)(2)(A) for its potential acute effects. These commenters contended that some of the effects seen at the end of a 90–day inhalation study (inflammation, edema, cellular necrosis, hyperplasia, and exfoliation) are all acute effects that can be seen following single exposures to various pulmonary irritants. They contended that the fact that these respiratory effects were seen at the end of a 90–day inhalation study is not sufficient to consider them chronic effects. Instead, these effects were most likely acute respiratory effects that would have undergone biological repair as soon as exposures ceased, such that they would not have been evident if the animals were allowed a 2-week recovery period prior to sacrifice.

Based on EPA's reanalysis of the available data for this chemical (Ref. 4), EPA agrees with the commenters that the respiratory effects reported in humans are most likely due to its acute effects. EPA also agrees that the inflammation of the nasal mucosa observed in mice in the 90–day inhalation study was likely due to irritation of acute nature. However, the neurotoxic effects, such as insomnia, anxiety, perceptual ability and cognitive impairments, especially if they occurred in occupational exposures, were of chronic nature. Therefore, EPA reaffirms its finding that there is sufficient evidence for listing hydrogen sulfide pursuant to section 313(d)(2)(B) for chronic human health effects based upon the available neurotoxicity data.

2. *Crotonaldehyde.* One commenter recommended that crotonaldehyde not be listed because of the lack of sufficient ecotoxicity data. The commenter contended that the compound is neither persistent nor bioaccumulative, and that the proposal to list crotonaldehyde is an example of inappropriately using a few ecotoxicity studies that marginally fall below a "may be sufficient" threshold to determine that the chemical should be listed.

Based on EPA's reanalysis of crotonaldehyde's aquatic toxicity data, EPA has concluded that this chemical is moderately toxic to aquatic organisms (Ref. 3). Its acute LC_{50} values for fish, daphnid, and algae are 0.65, 2.0, and 0.88 mg/L, respectively. The chronic value for fish was found to be 0.16 mg/L, resulting in a concentration of concern (COC) level of 0.016 mg/L. Crotonaldehyde is also not expected to be persistent in the environment based on a stability study showing its half-life to be about 18 hours (Ref. 7). EPA has conducted exposure and release analyses (Refs. 7 and 8) for this chemical and believes that there is not a significant environmental aquatic risk resulting from releases of it from the site-specific manufacturing or from intermediate uses (Refs. 10 and 11). Therefore, the Agency does not believe that crotonaldehyde meets the toxicity criteria of EPCRA section 313(d)(2)(C) and is not listing it in this final rule. However, during the reevaluation of crotonaldehyde's environmental toxicity, the Agency also reexamined its human health effects. Based on a weight-of-evidence analysis, the Agency believes that there are carcinogenicity concerns for crotonaldehyde. Therefore, crotonaldehyde will be proposed for listing pursuant to section 313(d)(2)(B) in the Agency-initiated expansion rule to follow soon.

3. *Ethylenebisdithiocarbamic acid, salts and esters (EBDCs).* One commenter disagreed with the Agency's proposal to add EBDCs to the section 313 list of toxic chemicals without presenting any data regarding the toxicity of EBDCs themselves, but rather because of the presence of ethylenethiourea (ETU), which is

already included on the section 313 list. EPA reaffirms its decision to list EBDCs pursuant to section 313(d)(2)(B) based on the available data for ETU. It is commonly recognized that the biological effects of administered chemicals are frequently due to their impurities or metabolites. EBDCs readily metabolize and degrade to ETU, which has been classified by EPA as a B2 compound; i.e., the compound is a probable human carcinogen based on sufficient evidence from animal studies and lack of data in humans. EPA believes that EBDCs are carcinogenic based on the carcinogenicity of ETU, a contaminant, metabolite and degradation product of EBDCs. Because there is sufficient evidence that EBDCs' contaminant, metabolite and degradation product causes cancer in animal studies and therefore is a probable human carcinogen, EPA believes that this evidence is sufficient to satisfy the EPCRA section 313(d)(2)(B) finding that EBDCs can reasonably be anticipated to cause cancer in humans (Ref. 4). Therefore, the Agency is adding the category "ethylenebisdithiocarbamic acid, salts and esters" to the section 313 list.

4. *Formic acid.* One commenter stated that the data cited to support the listing of formic acid are primarily based on accidental or deliberate poisonings of humans which resulted from the corrosive nature of the acid. According to the commenter, data presented by the Agency demonstrate that the acute toxicity of formic acid is significantly less than that of several chemicals (2-chloroethyl vinyl ether, methyl ethyl ketone peroxide, and 1,4-naphthoquinone) for which the Agency judged the acute lethality values to be "insufficient" for listing. EPA proposed the listing of formic acid under EPCRA section 313(d)(2)(A) based on the acute corrosive nature of the chemical, not just on its acute lethality. Two of the three chemicals cited by the commenter (2-chloroethyl vinyl ether and 1,4-naphthoquinone) were not proposed for listing despite their higher acute lethality values because they are not corrosive (Ref. 4). The third chemical, methyl ethyl ketone peroxide, is corrosive (Ref. 4) and will be referred for further evaluation for potential addition to the section 313 list in a future action.

Specific comments were provided by two commenters regarding exposures to formic acid. According to one commenter, because of formic acid's relatively low vapor pressure, releases of formic acid do not readily vaporize and thus do not result in vapor clouds, nor are formic acid vapors likely to move rapidly offsite in a concentrated form. This commenter, Hoechst Celanese, also presented results of formic acid release modeling from its plant in Pampa, Texas, the largest domestic production plant, and contended that these results show that EPA has no basis to conclude that concentrations of formic acid sufficient to cause human health effects are reasonably likely to exist beyond facility site boundaries as a result of continuous or frequently recurring releases. The other commenter, Monsanto, contended that formic acid waste typically would be neutralized either at the facility or at a treatment plant, or put into an enclosed system such as a deep well. Monsanto presented data showing no releases beyond Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) reportable quantity (RQ) levels (i.e., 5,000 pounds) from any of its plants in the period from January 1990 to September 1992. EPA does not dispute the particular release and exposure data provided by these commenters. However, EPA's own exposure modeling (Refs. 5, 6, and 7), based in part on the information provided by Hoechst Celanese, shows a significant potential for acute human health risk (Ref. 9) from fugitive emissions of formic acid at levels reasonably likely to exist beyond facility site boundaries.

During the reopening of the public comment period following the publication of the notice of availability, one commenter disagreed with the Agency's determination that an NTP study on formic acid (Ref. 12) is sufficient evidence for listing this chemical under EPCRA section 313(d)(2)(B) for chronic human health effects. Specifically, the commenter stated that the effects demonstrated in the chronic study were at concentrations higher than those defined in EPA's draft screening criteria guidelines as sufficient for listing. Therefore, the commenter argued, the study does not lead to the conclusion that there is sufficient evidence to list formic acid for chronic effects. One additional letter was received that was not formally submitted as a comment but that will be treated as a comment by the Agency. This commenter noted that the effects seen in rats and mice were "microscopic changes" that "ranged from minimal to mild in severity." This commenter apparently believes that these effects observed do not constitute sufficient evidence to meet the "much more rigorous listing criteria" of EPCRA section 313.

Chronic effects of formic acid were observed at concentrations which place this substance in the "may be sufficient for listing" category under the EPA's draft hazard assessment guidelines (Ref. 1). Decisions on whether or not to add chemicals in this category are made on a case-by-case basis with reference to the section 313(d) criteria. The NTP study demonstrated that formic acid is capable of producing respiratory lesions in both mice and rats at relatively low doses (128 ppm, 53 mg/kg/day) upon chronic inhalation exposures, resulting in a No Observed Adverse Effect Level (NOAEL) of 32 ppm (13 mg/kg/day). Therefore, the Agency finds that this study provides sufficient evidence to establish that formic acid can reasonably be anticipated to cause in humans chronic health effects as described in EPCRA section 313(d)(2)(B). Thus, EPA's final determination to list formic acid is based on both acute human health effects (313(d)(2)(A)) and chronic human health effects (313(d)(2)(B)). Although EPA has decided to refer other chemicals to the expansion project, because the Agency has not altered its basic proposal to list formic acid, nor is it abandoning its initial basis for listing (313(d)(2)(A)), EPA is adding formic acid at this time.

5. *Methyl mercaptan.* Several commenters contended that the available health data do not support the listing of methyl mercaptan under section 313 as a chronic neurotoxin. One commenter maintained that the findings cited by EPA do not provide sufficient evidence to support a section 313(d)(2)(B) listing but are better evaluated as acute effects under section 313(d)(2)(A). According to the commenter, none of the studies cited by EPA documents a "serious or irreversible neurological disorder" from exposure to methyl mercaptan. Instead, the studies that are cited document acute effects such as death and coma which result from high dose exposures to methyl mercaptan. According to the commenter, such effects are not the type that should be used to support a section 313(d)(2)(B) finding. EPA does not agree that all of the health hazard data that were included in the proposal in support of the section 313(d)(2)(B) finding should have been evaluated instead against section 313(d)(2)(A) for acute effects (Ref. 4). Chronic low exposures to methyl mercaptan have been shown to cause functional neurodisorders in one group of industrial workers. Acute toxicity studies in animals confirm the neurotoxicity symptoms demonstrated in the industrial workers. In addition, methyl mercaptan caused pulmonary effects in rats and hepatic effects in

mice at very low chronic inhalational exposures. Based on EPA's reanalysis of this information, which was cited in the proposed rule for this chemical (Ref. 4), EPA reaffirms its position that these remaining data are sufficient to support a section 313(d)(2)(B) finding based on neurotoxicity and other chronic health concerns. However, the acute toxicity data on methyl mercaptan are not sufficient to support a section 313(d)(2)(A) finding due to the high dose levels to produce effects seen in these studies.

6. *Warfarin and salts.* As discussed in Unit IV.D. of this preamble, four commenters contended that EPCRA does not provide for the addition of a chemical category without individually evaluating and justifying each member of that category. The Agency believes it may satisfy the statutory criteria for adding a chemical category to the list by identifying the toxic effect of concern for at least one member of the category, and then showing why that effect may reasonably be expected to be caused by all other members of that category. The justification for the listing of the category "warfarin and salts" is as follows: warfarin has produced developmental and reproductive effects in humans and animals; the data supporting this were summarized in the proposed rule and will not be reiterated here. Warfarin salts can dissociate readily to the warfarin and salt ions, and therefore are expected to produce similar effects. Therefore, EPA finds it appropriate to list the category "warfarin and salts" pursuant to EPCRA section 313(d)(2)(B).

H. Miscellaneous Comments

One commenter stated that the Agency should add all 80 chemicals and 2 categories that were included in the petition, not just the subsets that were included in the proposal. EPA reiterates that 12 chemicals were not proposed because the hazard assessment did not identify sufficient evidence that these chemicals meet the toxicity criteria for listing. EPA cannot add chemicals that do not meet the toxicity criteria for listing.

One commenter suggested that, for the 12 chemicals for which the data were insufficient for listing, EPA should defer the listing decision rather than deny the petition, so that these chemicals could be added more quickly in the future if additional toxicity information became available. Again, these 12 chemicals were not proposed for listing because the hazard assessment did not identify sufficient evidence that these chemicals meet the toxicity criteria for listing. EPA does not believe that there is any reason to defer a decision on these chemicals. EPA could reconsider listing these chemicals should new toxicity evidence become available in the future and could propose their addition at that time.

One commenter pointed out that the estimates in the proposal for the hourly rate and the number of hours required to fill out a Form R were inconsistent with those in a **Federal Register** notice published on September 10, 1992 (57 FR 41496). These estimates have been revised for the final rule to remedy this inconsistency.

One commenter stated that EPA needs to be sure that the number of chemicals on the section 313 list that are listed solely for environmental effects does not exceed the 25 percent statutory limit. In response, none of the chemicals being added to the list in this action is being listed solely for environmental toxicity. Therefore, this action will not cause the number of chemicals listed solely for environmental effects to exceed the 25 percent limit.

V. Final TSCA Section 5(a)(2) Significant New Use Rule

A. SNUR Statutory Authority

This final SNUR is issued under section 5(a)(2) of TSCA, 15 U.S.C. 2604(a)(2).

B. SNUR Statutory and Regulatory Background

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Section 5(a)(2) factors generally relate to the extent to which a use changes the volume of a chemical's production or the type, form, magnitude, or duration of exposure to it. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a SNUR are subject to the export notification provisions of TSCA section 12(b) and the import certification requirements of TSCA section 13. The regulations that interpret sections 12(b) and 13 appear at 40 CFR part 707.

C. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354), and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the provisions which apply to SNURs in general. In the **Federal Register** of August 17, 1988 (53 FR 31248), EPA promulgated a "User Fee Rule" (40 CFR Part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to the CFR and the cited **Federal Register** notices for further information.

D. Summary of this SNUR

This SNUR, proposed in the **Federal Register** of September 8, 1992 (57 FR 41020), requires persons to submit a significant new use notice to EPA at least 90 days before manufacturing, importing, or processing the following chemical substances, in amounts of 10,000 pounds or greater, per year, per facility, for any use:

CAS No.	Name
101–55–3	4-Bromophenyl phenyl ether
353–50–4	Carbon oxyfluoride
50–29–3	DDT
56–53–1	Diethylstilbestrol
62–50–0	Ethyl methanesulfonate
1888–71–7 ...	Hexachloropropene
56–49–5	3-Methylcholanthrene
56–04–2	Methylthiouracil
70–25–7	MNNG (N-Methyl-N'-nitro-N-nitrosoguanidine)
50–07–7	Mitomycin C
1116–54–7 ...	N-Nitrosodiethanolamine
615–53–2	N-Nitroso-N-methylurethane
930–55–2	N-Nitrosopyrrolidine
608–93–5	Pentachlorobenzene
62–44–2	Phenacetin
50–55–5	Reserpine
95–94–3	1,2,4,5-Tetrachlorobenzene
95–35–4	1,3,5-Trinitrobenzene

The chemical substances included in this SNUR are certain substances proposed for addition to the list of toxic chemicals subject to reporting under section 313 of EPCRA, which EPA believes are not currently being produced in amounts of at least 10,000 pounds per year at any facility. In addition, each of the subject substances appears on the TSCA Inventory. (The Inventory is a list of existing chemical substances compiled by EPA under TSCA section 8(b).)

For the purposes of this SNUR, the term "facility" is defined as "all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person)." This definition of "facility," which is being added by today's action to 40 CFR part 721 — Significant New Uses of Chemical Substances, under section 721.3, is substantially the same as that under EPCRA section 329 and 40 CFR Part 372 — Toxic Chemical Release Reporting; Community Right-to-Know.

Trypan blue (CAS No. 72–57–1), paraldehyde (CAS No.123–637), hexachlorophene (CAS No. 70–30–4), and warfarin and salts were listed in the proposed SNUR but are not included in this final SNUR because they appear to be produced in amounts of at least 10,000 pounds per year and otherwise meet the EPCRA section 313 listing criteria. Accordingly, they are among the 21 chemical substances and 2 chemical categories being added today to the EPCRA section 313 list. As a result of their EPCRA listing, including these substances and one chemical category on the SNUR would not at this time further each of EPA's objectives for today's SNUR. (See Unit III.B. of this preamble for further discussion of the manufacturing volume threshold being applied to today's EPCRA section 313 listing action. Unit V.E. of this preamble describes the objectives and rationale for the final SNUR.)

Because trypan blue, paraldehyde, hexachlorophene, and warfarin and salts were included in the SNUR proposal, the export notification requirements of TSCA section 12(b) and 40 CFR part 707 were triggered for these substances. As EPA is not finalizing the SNUR for these substances and chemical category, EPA is withdrawing the proposal for the purposes of TSCA 12(b). As such, TSCA section 12(b) export notifications for trypan blue, paraldehyde, hexachlorophene, and warfarin and salts that would otherwise be required because of the proposed SNUR are no longer required as of the effective date of this rule.

E. Objectives and Rationale for this SNUR.

To determine what would constitute a significant new use of the chemical substances that are the subjects of this SNUR, EPA considered relevant information on the toxicity of the chemical substances, likely exposures associated with possible uses, and the relevant factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new use that is designated in this rule. EPA wants to ensure that:

1. The Agency receives notice of any company's intent to manufacture, import, or process per year, per facility, for any use, the subject chemical substances in amounts of at least 10,000 lbs. per year, per facility, for any use.

2. The Agency will have prospective manufacturing, importing, and processing data available from the significant new use notice, which will facilitate the decision making process regarding the potential future listing under section 313 of EPCRA of the chemical substances that are the subject of this rule.

3. The Agency will have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins manufacture, importation, or processing for a significant new use.

4. The Agency will be able to regulate prospective manufacturers, importers, or processors of the chemicals listed in this alternative before a significant new use occurs, provided that the degree of potential health and/or environmental risk, or the uncertainty about the risks, is sufficient to warrant such regulation.

EPA has concerns regarding the toxicity of the chemical substances that are included in this SNUR. EPA believes exposures to the substances listed in this rule associated with manufacture, import, processing, use, and associated activities could increase should manufacture, import, or processing volumes equal or exceed 10,000 pounds per year, per facility. The notice required by the SNUR will provide EPA with the opportunity to evaluate activities associated with the significant new use, and an opportunity to protect against unreasonable risks, if any, from exposure to the chemical substances which could result from the proposed significant new use. Additionally, the information submitted with a SNUR notice will be used by EPA to consider initiating a rulemaking under EPCRA section 313 to list the chemical substance that was the subject of the significant new use notice, if appropriate.

F. Comments on the Proposed SNUR

This SNUR was proposed as an alternative to the listing of certain substances under EPCRA section 313. A discussion of the comments received on the SNUR alternative, including EPA's responses to the comments, can be found in Unit IV.C. of this preamble.

VI. Rulemaking Record

The record supporting these final rules is contained in the docket number OPPTS–400069C. All documents, including an index of the docket, are available for viewing and photocopying in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. E–G102, 401 M St., SW., Washington, DC 20460.

VII. References

(1) U.S. EPA/OPPT. 1992. Revised Draft Hazard Assessment Guidelines for Listing Chemicals on the Toxic Release Inventory.

(2) U.S. EPA/OPPT/EETD. 1993. "Economic Analysis of the Addition of 23 Chemicals to the EPCRA Section 313 List of Toxic Chemicals."

(3) U.S. EPA. 1993. Memorandum from Richard Clements, Ph.D., to David Brooks, Technical Integrator. "Response to Comments on Petition to Add RCRA Chemicals; Revised September 20, 1993."

(4) U.S. EPA. 1993. Memorandum from Cheng-Chun Lee, Senior Science Advisor, to David A. Brooks, Technical Integrator. "EPCRA Section 313 Petition to Add RCRA Chemicals and Responses to Rebuttal Comments on FR Notice."

(5) U.S. EPA/OPPT/EETD. 1993. Memorandum from Mary Ryan to David Brooks. "Final Exposure/PDR Report."

(6) U.S. EPA/OPPT/EETD. 1993. "Final Chemistry Report for Formic Acid, Methyl Mercaptan, Methyl Chlorocarbonate, p-Chloro-m-cresol, and bis(2-Chloroethoxy)methane," Steven DeVito.

(7) U.S. EPA/OPPT/EETD. 1993. Memorandum from Bob Boethling, Chief, Environmental Fate Section, to David Brooks, Technical Integrator. "Exposure Assessment for Crotonaldehyde--Toxics Release Inventory (TRI) Governor's Petition."

(8) U.S. EPA/OPPT/EETD. 1993. Memorandum from Paul Quillen, Chemical Engineer, to David Brooks, Technical Integrator. "CEB's Release Assessment Document; Governor's Petition to Add RCRA Substances to TRI."

(9) U.S. EPA/OPPT/CSRAD. 1993. Memorandum from David Brooks, Technical Integrator, to Linda Wunderlich, Project Manager. "Acute Human Health Risk Assessments for Three TRI Chemicals."

(10) U.S. EPA/OPPT/CSRAD. 1993. Memorandum from David Brooks, Technical

Integrator, to Linda Wunderlich, Project Manager. "Ecological Risk Assessment for Crotonaldehyde—TRI Governor's Petition."

(11) U.S. EPA/OPPT/CSRAD. 1993. Memorandum from Greg Susanke, Biologist, to David Brooks, Technical Integrator. "Environmental Review of Crotonaldehyde for TRI Listing."

(12) National Toxicology Program (NTP). 1992. NTP Technical Report on Toxicity Studies of Formic Acid (CAS No: 64–18–6) Administered by Inhalation to F344/N Rats and B6C3F1 Mice. NTPTOX 19, NIH Publication 92–3342. Research Triangle Park, NC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Regarding point (1) above, EPA's economic analysis estimates up to 1,689 additional reports entailing annual costs to EPA, industry, and States of about $4.8 million as a result of the addition of the 21 chemicals and 2 chemical categories to the section 313 list of toxic chemicals.

Incremental costs attributable to the promulgated SNURs were considered but, due to the great uncertainty associated with the frequency of occurrence of potentially regulated activities, such costs could only be presented at the unit cost level. These estimates are discussed briefly below.

Unit costs to industry associated with the promulgated SNURs were estimated to range between $2,000 and $10,000 for each significant new use notice or modification request prepared, while costs to EPA for issuing and administering the SNURs were estimated to be $2,000. [Incremental costs to industry in connection with a response not to engage in a significant new use could not be estimated.] As costs would only be incurred in the event that a chemical listed in the rule were manufactured, imported, or processed in excess of the listing threshold, and as such chemicals are currently not manufactured, imported, or processed in excess of 10,000 pounds, it is expected that any overall increase in incremental costs resulting from the promulgated SNURs would be small.

Furthermore, EPA's assessment is that these rules will not adversely and materially affect a sector of the economy. In addition to these economic considerations, the Agency does not believe that these rules meet criteria (2), (3), or (4) as outlined above. Therefore, EPA has determined that these are not "significant" regulatory actions.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. Although not considered "significant," this rule was sent to OMB for informational purposes.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

40 CFR part 372 exempts certain small businesses from reporting; specifically, those facilities with fewer than 10 full-time employees. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. Additionally, facilities which manufacture or process less than 25,000 pounds or otherwise use less than 10,000 pounds of these chemicals annually are not required to report for these chemicals under part 372. Therefore, EPA concludes that the rule adding substances to part 372 is not likely to significantly impact a substantial number of small entities.

Additionally, EPA has determined that the final SNURs will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by the SNURs would likely be small businesses. However, EPA expects to receive few SNUR notices for these chemical substances. Therefore, EPA believes that the number of small businesses affected by the final rules would not be substantial, even if all the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in these final rules under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0093 for the EPCRA rule and 2070–0038 for the TSCA SNURs.

The public reporting burden for this collection of information is estimated to average 53 hours per response for the EPCRA rule. For the SNURs, the public reporting burden is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2131, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: November 29, 1993.

Lynn Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR Chapter I is amended as follows:

1. Subchapter J is amended in part 372 as follows:

PART 372—[AMENDED]

a. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

b. In § 372.65 by adding chemicals to paragraph (a) alphabetically and to

paragraph (b) by CAS No. sequence and to paragraph (c) by alphabetically adding the categories to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical name	CAS No.	Effective date
* * * * *	*	*
Acetophenone	98-86-2	1/1/94
* * * * *	*	*
Amitrole	61-82-5	1/1/94
* * * * *	*	*
Bis(2-chloroethoxy)methane	111-91-1	1/1/94
* * * * *	*	*
1,4-Dichloro-2-butene	764-41-0	1/1/94
* * * * *	*	*
Dihydrosafrole	94-58-6	1/1/94
* * * * *	*	*
Ethylidene dichloride	75-34-3	1/1/94
* * * * *	*	*
Formic acid	64-18-6	1/1/94
* * * * *	*	*
Hexachlorophene	70-30-4	1/1/94
* * * * *	*	*
Hydrogen sulfide	7783-06-4	1/1/94
* * * * *	*	*
Malononitrile	109-77-3	1/1/94
* * * * *	*	*
Methacrylonitrile	126-98-7	1/1/94
* * * * *	*	*
Methyl chlorocarbonate	79-22-1	1/1/94
* * * * *	*	*
Methyl mercaptan	74-93-1	1/1/94
* * * * *	*	*
2-Methylpyridine	109-06-8	1/1/94
* * * * *	*	*
5-Nitro-o-toluidine	99-55-8	1/1/94
* * * * *	*	*
Paraldehyde	123-63-7	1/1/94
* * * * *	*	*
Pentachloroethane	76-01-7	1/1/94
* * * * *	*	*
Pronamide	23950-58-5	1/1/94
* * * * *	*	*
1,1,1,2-Tetrachloroethane	630-20-6	1/1/94
* * * * *	*	*
Thiram	137-26-8	1/1/94
* * * * *	*	*
Trypan blue	72-57-1	1/1/94
* * * * *	*	*

(b) * * *

CAS No.	Chemical Name	Effective date
*	*	*
61-82-5	Amitrole	1/1/94
*	*	*
64-18-6	Formic acid	1/1/94
*	*	*
70-30-4	Hexachlorophene	1/1/94
*	*	*
72-57-1	Trypan blue	1/1/94
*	*	*
74-93-1	Methyl mercaptan	1/1/94
*	*	*
75-34-3	Ethylidene dichloride	1/1/94
*	*	*
76-01-7	Pentachloroethane	1/1/94
*	*	*
79-22-1	Methyl chlorocarbonate	1/1/94
*	*	*
94-58-6	Dihydrosafrole	1/1/94
*	*	*
98-86-2	Acetophenone	1/1/94
*	*	*
99-55-8	5-Nitro-o-toluidine	1/1/94
*	*	*
109-06-8	2-Methylpyridine	1/1/94
109-77-3	Malononitrile	1/1/94
*	*	*
111-91-1	Bis(2-chloroethoxy)methane	1/1/94
*	*	*
123-63-7	Paraldehyde	1/1/94
*	*	*
126-98-7	Methacrylonitrile	1/1/94
*	*	*
137-26-8	Thiram	1/1/94
*	*	*
630-20-6	1,1,1,2-Tetrachloroethane	1/1/94
*	*	*
764-41-0	1,4-Dichloro-2-butene	1/1/94
*	*	*
7783-06-4	Hydrogen sulfide	1/1/94
*	*	*
23950-58-5	Pronamide	1/1/94
*	*	*

(c) * * *

Category Name	Effective date
*	*
Ethylenebisdithiocarbamic acid, salts and esters	1/1/94
* * * * * * *	
Warfarin and salts	1/1/94
* * * * * * *	

2. Subchapter R is amended in part 721 as follows:

Part 721—[AMENDED]

a. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607 and 2625(c).

b. In § 721.3, by adding one definition alphabetically to read as follows:

§ 721.3 Definitions.

* * * * *

Facility means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person).

* * * * *

c. By adding new § 721.1430 to subpart E to read as follows:

§ 721.1430 Pentachlorobenzene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance pentachlorobenzene (CAS No. 608–93–5) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

d. By adding new § 721.1435 to subpart E to read as follows:

§ 721.1435 1,2,4,5-Tetrachlorobenzene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 1,2,4,5-tetrachlorobenzene (CAS No. 95–94–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

e. By adding new § 721.1440 to subpart E to read as follows:

§ 721.1440 1,3,5-Trinitrobenzene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 1,3,5-trinitrobenzene (CAS No. 95–35–4) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

f. By adding new § 721.2084 to subpart E to read as follows:

§ 721.2084 Carbon oxyfluoride (Carbonic difluoride).

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance carbon oxyfluoride (CAS No. 353–50–4), also referred to as carbonic difluoride, is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

g. By adding new § 721.2092 to subpart E to read as follows:

§ 721.2092 3-Methylcholanthrene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 3-methylcholanthrene (CAS No. 56–49–5) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

h. By adding new § 721.2287 to subpart E to read as follows:

§ 721.2287 DDT (Dichlorodiphenyltrichloroethane).

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance DDT (dichlorodiphenyltrichloroethane) (CAS No. 50–29–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

i. By adding new § 721.2355 to subpart E to read as follows:

§ 721.2355 Diethylstilbestrol.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance diethylstilbestrol (CAS No. 56–53–1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

j. By adding new § 721.3350 to subpart E to read as follows:

§ 721.3350 N-Nitrosodiethanolamine.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance N-nitrosodiethanolamine (CAS No. 1116–54–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

k. By adding new § 721.3430 to subpart E to read as follows:

§ 721.3430 4-Bromophenyl phenyl ether.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 4-bromophenyl phenyl ether (CAS No. 101–55–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

l. By adding new § 721.4080 to subpart E to read as follows:

§ 721.4080 MNNG (N-methyl-N'-nitro-N-nitrosoguanidine).

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance MNNG (N-methyl-N'-nitro-N-nitrosoguanidine) (CAS No. 70–25–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

m. By adding new § 721.4155 to subpart E to read as follows:

§ 721.4155 Hexachloropropene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance hexachloropropene (CAS No. 1888–71–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

n. By adding new § 721.5175 to subpart E to read as follows:

§ 721.5175 Mitomycin C.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance mitomycin C (CAS No. 5007–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

o. By adding new § 721.5710 to subpart E to read as follows:

§ 721.5710 Phenacetin.

(a) Chemical substance and significant new use subject to reporting. (1) The chemical substance phenacetin (CAS No. 62–442) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

p. By adding new § 721.9000 to subpart E to read as follows:

§ 721.9000 N-Nitrosopyrrolidine.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance N-nitrosopyrrolidine (CAS No. 930–55–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

q. By adding new § 721.9470 to subpart E to read as follows:

§ 721.9470 Reserpine.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance reserpine (CAS No. 50–555) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

r. By adding new § 721.9660 to subpart E to read as follows:

§ 721.9660 Methylthiouracil.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance

methylthiouracil (CAS No. 56–04–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

s. By adding new § 721.9957 to subpart E to read as follows:

§ 721.9957 N-Nitroso-N-methylurethane.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance N-nitroso-N-methylurethane (CAS No. 615–53–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

t. By adding new § 721.9580 to subpart E to read as follows:

§ 721.9580 Ethyl methanesulfonate.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance ethyl methanesulfonate (CAS No. 62–50–0) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

[FR Doc. 93–29516 Filed 11–29–93; 1:29 pm]

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Wednesday, December 1, 1993

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CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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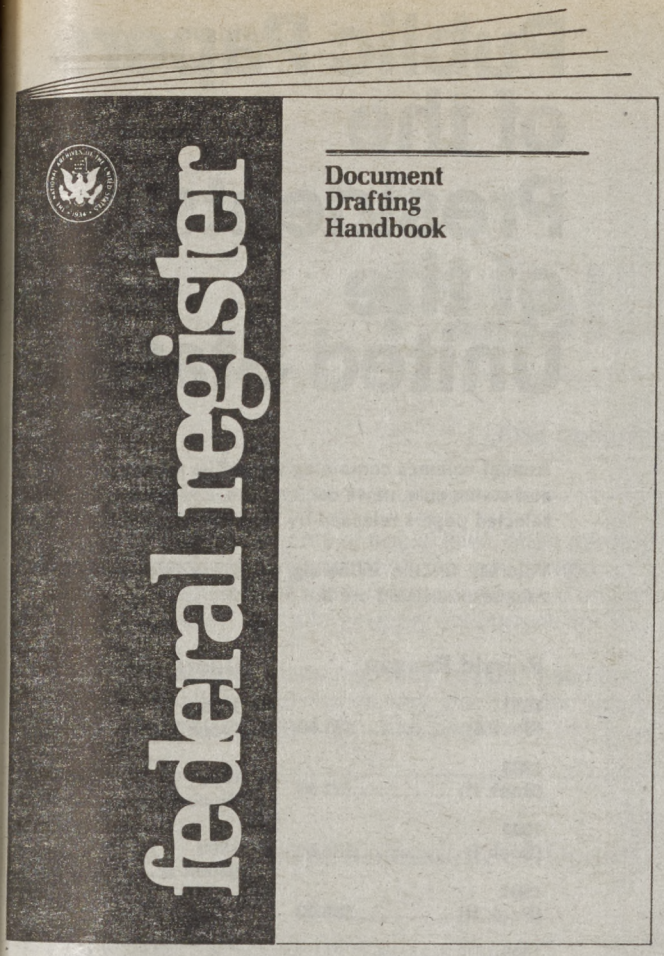
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A new table will be published in the first issue of each month.

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December 30	January 14	January 31	February 14	February 28	March 30



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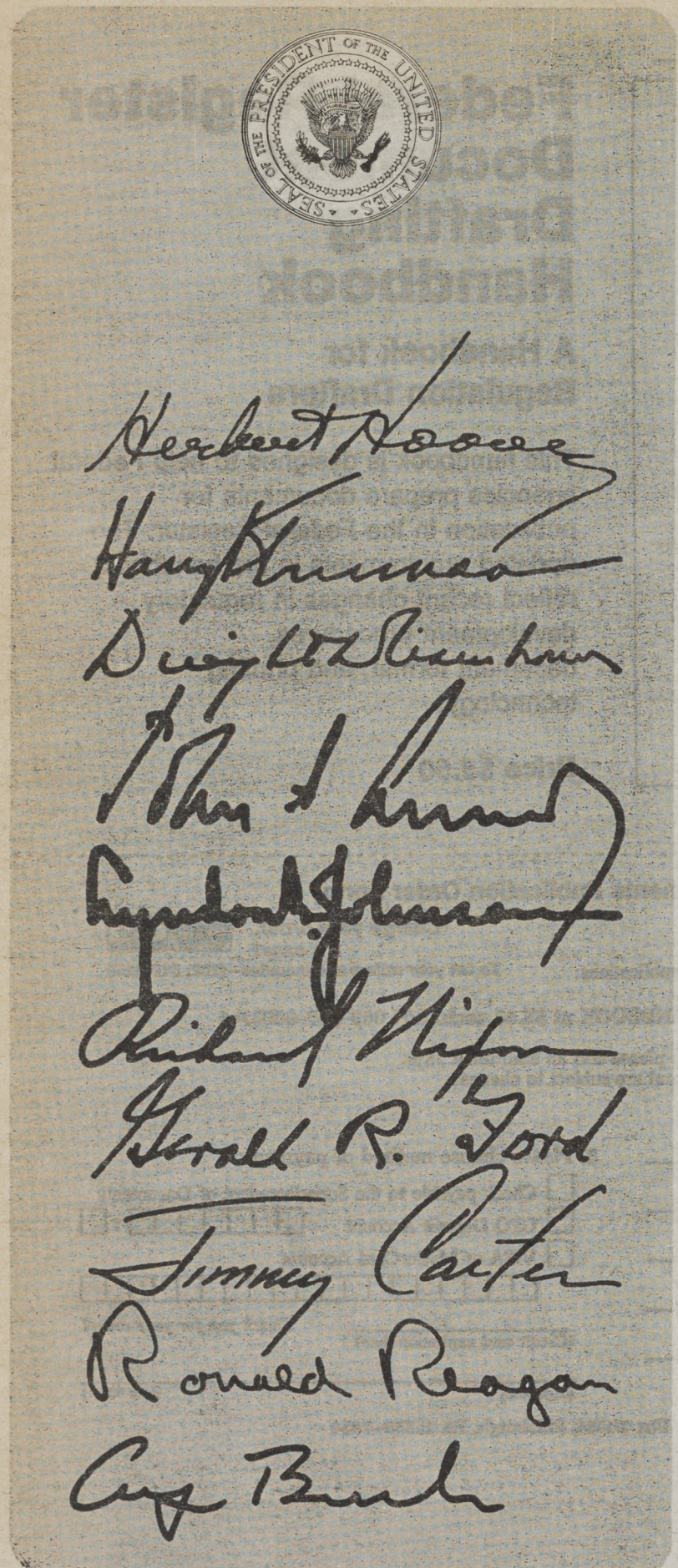
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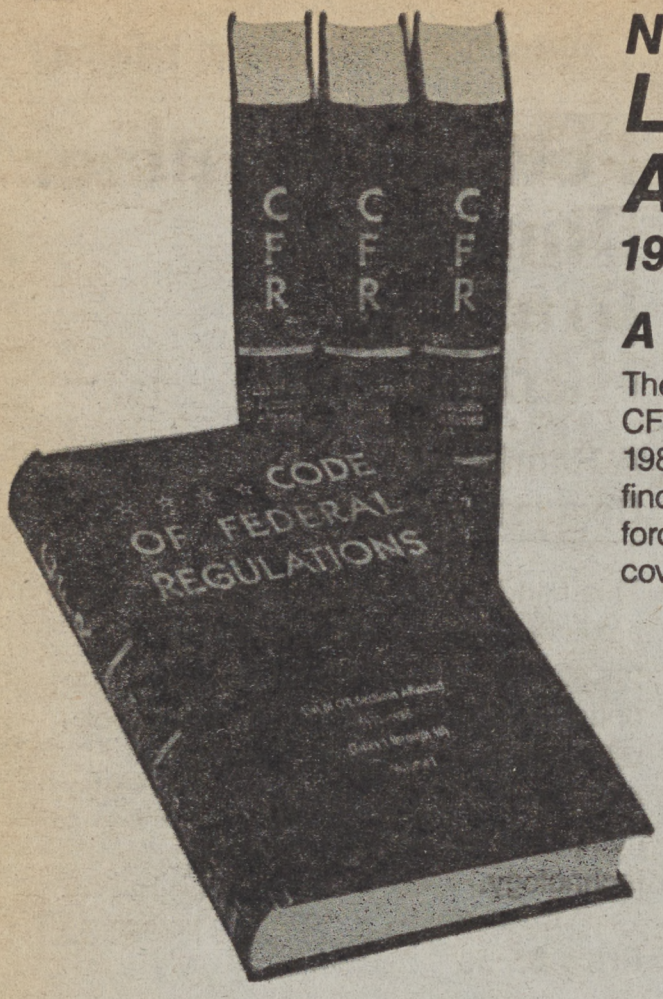
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